

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

IN THE MATTER OF:

Phase II Distribution  
of the 2004-2009  
Cable Royalty Funds

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IN THE MATTER OF:

Phase II Distribution  
of the 1999-2009  
Satellite Royalty Funds

Volume 3

Wednesday,  
December 10, 2014

Room LM-403  
Madison Building  
Library of Congress  
101 Independence Avenue, SE  
Washington, DC

The above-entitled matter came on for hearing, pursuant to notice, at 9:15 a.m.

BEFORE: THE HONORABLE SUZANNE M. BARNETT  
THE HONORABLE JESSE FEDER  
THE HONORABLE DAVID R. STRICKLER  
Copyright Royalty Judges

TABLE OF CONTENTS	
WITNESSE	DIRECT CROSS REDIRECT RECROSS
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
26	26
27	27
28	28
29	29
30	30
31	31
32	32
33	33
34	34
35	35
36	36
37	37
38	38
39	39
40	40
41	41
42	42
43	43
44	44
45	45
46	46
47	47
48	48
49	49
50	50
51	51
52	52
53	53
54	54
55	55
56	56
57	57
58	58
59	59
60	60
61	61
62	62
63	63
64	64
65	65
66	66
67	67
68	68
69	69
70	70
71	71
72	72
73	73
74	74
75	75
76	76
77	77
78	78
79	79
80	80
81	81
82	82
83	83
84	84
85	85
86	86
87	87
88	88
89	89
90	90
91	91
92	92
93	93
94	94
95	95
96	96
97	97
98	98
99	99
100	100

NAME	DATE	GROSS	REBATE	AMOUNT
DENISE VERNON				
By Mr. Boydston	10			118
By Mr. Olaniran		19/84		
By Mr. MacLean		91		127
Voir Dire on page 81				
Raul Galaz				
By Mr. Boydston	132			
By Mr. MacLean		253		
By Mr. Olaniran		280		
Jane Saunders				
By Mr. Olaniran	316			
By Mr. Boydston		326		

EXHIBIT NO.	DESCRIPTION	ID	RECD
IPG			
113	Letter to 2004-09 Cable Claimants #2		20
126	Letter to Feed the Children counsel	121	124
12	First Miracle Productions		135
13	Owner/Agent List	154	156
14	McNeely Declaration	167	170
15	Valle Declaration	171	172
16		160	162
17	BEC Representation		172
18	Cochran Declaration	180	194
20	Fair Declaration	195	200
21	AFI Award	201	204
22	Dragonball z	204	206
23	Intelisando Declaration	206	208
24	Beast Wars Copyright	209	210
25	Beast Wars Copyright	210	213
26	Martha Stewart Living Copyright	214	216
27	Cosgrove Declaration	216	218
28	Jacobs Declaration	218	220
29	Notice Regarding Programing of Watercourse Road Productions		238

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30	Agreement between Worldwide Subsidy Group and Litton Syndication		239
31	Declaration of Steven Hoyt		242
32	Declaration of Maureen Millen		251
33	Declaration of Jonathan Flowman		256
34	Contract between Pintage WSG and Televisa		259
35	Contract between Pintage WSG and TV Azteca		261
36	List entitled Claimants Claimed by Pintage House through EGEDA		280
MPAA			
307	Feed the Children Notice re: Representation		34
356	IPG's Cable Claim for 2013	43	44
357	IPG's Joint Satellite Claim for 2013	43	47
358	Email Re: June Proceedings from Galaz and Vernon	78	83
341	Various certifications and program lists		344
	Settling Devotional Claimants		
	Attachment F to SDC Exhibit 602 Email: Ms. Vernon to Mr. Kowalski		105

• 5

1 P-R-O-C-E-E-D-I-N-G-S  
 2 9:17 a.m.  
 3 JUDGE BARRETT: Please be seated.  
 4 We beg your pardon for the late start.  
 5 All that animated discussion in the judges' room  
 6 was an economics lecture.  
 7 (Laughter.)  
 8 Mr. Boydston, you were examining Ms.  
 9 Vernon, I believe.  
 10 MR. BOYDSTON: I was, Your Honor.  
 11 And I ask Ms. Vernon if she would take  
 12 the stand.  
 13 In addition to that, I thought before  
 14 we get started I was going to hand out the  
 15 Exhibit 122, which I have already done, to  
 16 counsel. And I have three copies here. Shall I  
 17 go ahead and do that?  
 18 JUDGE BARRETT: Is that the one that  
 19 we asked you to try to get legible copies of?  
 20 MR. BOYDSTON: No, this is the one  
 21 that we didn't have all together. Well, we had  
 22 one copy and we found a few of those and we got a

6

1 whole bunch of paper.  
 2 JUDGE BARRETT: Understood.  
 3 MR. BOYDSTON: By my estimate, in the  
 4 way we originally delivered these things, it  
 5 should fit in your Volume 4 box.  
 6 JUDGE BARRETT: Thank you.  
 7 We will take the copies, but give  
 8 counsel an opportunity to look through it before  
 9 you have to accept or reject.  
 10 MR. BOYDSTON: Right.  
 11 MR. MacLEAN: Your Honor, this is on  
 12 a different topic. But, while we are kind of  
 13 setting up here, I just wanted to make the judges  
 14 aware. I have a status conference with another  
 15 court, a telephonic status conference, at 12:30  
 16 today. I scheduled it at 12:30, so that we knew  
 17 it would fall within the lunch break.  
 18 I only bring it up to request that  
 19 today we either take our lunch break promptly at  
 20 12:00, so I have a chance to get a bite to eat  
 21 before that, or wait until 12:30, closer to  
 22 12:30, so I can eat afterwards.

7

1 JUDGE BARRETT: You're not a real  
 2 lawyer, are you?  
 3 (Laughter.)  
 4 Certainly. Thank you, Mr. MacLean.  
 5 For the interest of those who are  
 6 counting, yesterday we recorded an hour and 35  
 7 minutes for MPAA, which means MPAA has used a  
 8 total of three hours and seven minutes. We  
 9 recorded two hours and 43 minutes for IPG, which  
 10 brings their total up, two-day total to five  
 11 hours, 22 minutes. And we recorded 43 minutes  
 12 for SDC, which brings their two-day total to 58  
 13 minutes. And we assume we are in the same  
 14 universe of discourse on that, and if we are way  
 15 off, let us know.  
 16 MR. BOYDSTON: Your Honor --  
 17 JUDGE BARRETT: Mr. Boydston.  
 18 JUDGE BARRETT: -- one other  
 19 housekeeping matter. In reviewing documents last  
 20 night, in my binders there was a discrepancy.  
 21 And I checked with counsel, they don't have the  
 22 discrepancy, and the record does not have the

8

1 discrepancy. So, I'm assuming you don't, but I  
 2 would check real quick.  
 3 JUDGE BARRETT: Okay.  
 4 MR. BOYDSTON: This is Exhibit 76 and  
 5 77, which I believe should be in Volume 3 or 4 of  
 6 the ones you got.  
 7 JUDGE STRICKLER: Two.  
 8 MR. BOYDSTON: Well, it could be in 2.  
 9 JUDGE STRICKLER: It basically exists  
 10 amongst all those volumes.  
 11 (Laughter.)  
 12 MR. BOYDSTON: Well, in the press at  
 13 the end, we were using different sized binders at  
 14 times.  
 15 The discrepancy is that in 76 it  
 16 should be a very short declaration by Chandra  
 17 Winford, and 77 should be a declaration of Miles  
 18 Woodlief. You can see his picture at the front.  
 19 And if that is the way you have it, good. That  
 20 means there was only one mistake made in my  
 21 binder, which is the best place to make it.  
 22 JUDGE BARRETT: Mine are in conformity

9

1 with what you described.  
 2 MR. BOYDSTON: Good.  
 3 JUDGE STRICKLER: Seventy-seven should  
 4 be what?  
 5 MR. BOYDSTON: Miles Woodlief, and you  
 6 have his picture there.  
 7 JUDGE BARRETT: It says "Benny Hinn"  
 8 at the bottom.  
 9 JUDGE STRICKLER: It says "Benny"  
 10 here, but that's not a picture of Benny Hinn.  
 11 MR. BOYDSTON: Yes.  
 12 JUDGE STRICKLER: That is a picture of  
 13 --  
 14 MR. BOYDSTON: Excellent point. That  
 15 is not Mr. Woodlief. That is Mr. Hinn.  
 16 JUDGE STRICKLER: Okay. I don't know  
 17 them, but I will take your word for it.  
 18 (Laughter.)  
 19 MR. BOYDSTON: And, Judge Feder,  
 20 you're okay with that?  
 21 JUDGE FEDER: Seventy-six, Winford?  
 22 MR. BOYDSTON: Yes.

10

1 JUDGE FEDER: Seventy-seven, Woodlief.  
 2 That's correct.  
 3 MR. BOYDSTON: Very good. As I said,  
 4 the best place for a mistake is in my copy, and  
 5 that's where it was.  
 6 Thank you, Your Honor.  
 7 WHEREUPON,  
 8 DENISE VERNON  
 9 having been called for examination by Counsel for  
 10 the IPG, and having been previously duly sworn,  
 11 resumed the witness stand, was examined and  
 12 testified as follows:  
 13 DIRECT EXAMINATION  
 14 BY MR. BOYDSTON:  
 15 Q Ms. Vernon, when we broke yesterday,  
 16 we were looking at Exhibit 113. And that  
 17 appeared to be another letter that you had sent  
 18 out to IPG claimants. And I had noted that the  
 19 first sentence essentially said, "Last night we  
 20 erringly sent you an email," et cetera.  
 21 I would ask you if you recall the  
 22 circumstances of this letter.

11

1 A Yes. As the letter says, we erringly  
 2 stated that you had not responded to our prior  
 3 emails, but that was not the case for a lot of  
 4 them, because, like I had testified before, we  
 5 had sent them the list, the Excel spreadsheet, of  
 6 the satellite programming list at that time. And  
 7 then, after that point, then we had gotten the  
 8 data, the program list, for the cable programs.  
 9 So, that is what we were sending out at this  
 10 time. And so, some of them had already responded  
 11 with identifying their programs with regard to  
 12 satellite. And then, now we were sending them  
 13 the cable programs for that period of time.  
 14 Q I'm not asking for a specific number,  
 15 but, in general, I believe there are several  
 16 hundred different claimants. Is that accurate?  
 17 A That is accurate, yes.  
 18 Q And have you personally dealt with  
 19 most of them?  
 20 A Quite a few, yes.  
 21 Q And so, I imagine it is a fairly big  
 22 job.

12

1 A It's a very big job, yes. And like I  
 2 said, it becomes even bigger when you're trying  
 3 to explain how to work an Excel spreadsheet.  
 4 Q And I imagine some of the claimants  
 5 don't have familiarity with some of these things?  
 6 A No.  
 7 Q And --  
 8 A Yes, and some of them do. Some of  
 9 them are great, you know, very tech-savvy or it  
 10 is a bigger company, you know, or something else.  
 11 So, they have people that will go through and do  
 12 it and identify the programs like we would like  
 13 to have them done. So, everything we have is  
 14 consistent.  
 15 Q In a situation where someone isn't  
 16 familiar with something like an Excel  
 17 spreadsheet, is it, then, incumbent on you to  
 18 sort of hold their hand through the process of  
 19 working with those?  
 20 A Yes. You know, if they have any  
 21 ability at all, then a lot of times I can just  
 22 walk them through it, yes. But, if it is clear

13

1 that there is no way they are getting this, then  
2 I tell them, you know, "Send me what you have.  
3 Do you have a catalog list?", you know, a file.  
4 Some of them just have a few shows and things  
5 like that. "Or you can email me your list of  
6 program titles, and we'll put it in, whatever is  
7 easier for you."

8 Q Are you familiar with Mr. Adler of  
9 Adler and --

10 A Yes, Larry Adler, uh-hum

11 Q And have you had personal  
12 communications with him?

13 A Yes, quite a few times. Yes, he is  
14 a very nice man. From the last proceedings and  
15 these proceedings -- well, and in between,  
16 because I have told him -- you know, he is very  
17 familiar. He has been around for a while and he  
18 knows how the proceedings work and the different  
19 phases, and that sort of thing.

20 So, we chat and I tell him what's  
21 going on, give him the background. You know,  
22 this is an appeal. This is when these

14

1 proceedings are starting up, and that sort of  
2 thing. And he lives in, I believe it is  
3 Maryland. So, it's not that far from here.

4 And he always tells me what museums I  
5 should see and what restaurants I should go to  
6 while I'm in D.C., because I have so much free  
7 time when I'm here.

8 (Laughter.)

9 So, yes, he's very nice.

10 Q And are you familiar with Maureen  
11 Millen? Have you communicated with her?

12 A Yes. Matter of fact, for the 2000  
13 proceedings, when we started this last one, then  
14 I was actually the first one that contacted her  
15 when we were trying to find all the clients. You  
16 know, because it had been so long since there had  
17 been any phase 2 proceedings, that people had  
18 moved; addresses had changed; personnel had  
19 changed, that sort of thing.

20 So, you know, Raul and I went through  
21 all of the boxes and tried to get contact  
22 information. And we both started trying to hunt

15

1 people down, you know, see who was there, what  
2 company, and everything else at that time.

3 And it took me a long time to find  
4 Maureen with IWV. And once I did find her -- and  
5 so, I utilized a whole lot of things, IMDB Pro.  
6 There's people that I found by going to the  
7 Secretary of State, you know, websites in the  
8 various states, to see if contact information, if  
9 they were still in business, that sort of thing.

10 And when I finally did find Maureen,  
11 then I know Raul had left messages. I found a  
12 cell number for her. Raul had left messages. I  
13 had left messages. And then, she finally called  
14 me back, and her story was just unbelievable.

15 I told her what was going on, you know  
16 --

17 MR. MacLEAN: Objection.

18 THE WITNESS: -- that the proceedings  
19 were finally starting.

20 MR. MacLEAN: This is getting  
21 narrative. The question was, are you familiar  
22 with Maureen Millen and have you communicated

16

1 with her.

2 THE WITNESS: Okay.

3 JUDGE BARRETT: Sustained.

4 BY MR. BOYDSTON:

5 Q You have now explained that you  
6 finally were able to get a number for Ms. Millen  
7 and you called her, and she told you certain  
8 things had happened in her life that had delayed  
9 her response. And what were those things?

10 A There was a long list. One, she had  
11 been in a horrible car accident, lots of  
12 surgeries --

13 MR. MacLEAN: Objection. Hearsay.

14 And also, I believe that Ms. Millen's declaration  
15 as to this aspect is already in evidence.

16 MR. BOYDSTON: I don't think she had  
17 mentioned the reason why she delayed a response.

18 JUDGE BARRETT: Is it relevant, Mr.  
19 Boydston?

20 MR. BOYDSTON: Well, I just wanted to  
21 explain --

22 COURT REPORTER: I'm sorry, ma'am, can

17

1 you repeat that, please?

2 JUDGE BARRETT: Yes. I asked Mr.

3 Boydston is it relevant.

4 MR. BOYDSTON: It just explains why --

5 this is part of the reason why Maureen Millen,

6 there was no contract for her that anyone had.

7 And you'll recall there was a lot of cross-

8 examination about the fact that she requested

9 that a contract, her original contract, be

10 essentially recreated and dated.

11 JUDGE BARRETT: Thank you.

12 Overruled.

13 THE WITNESS: I'll try to make it

14 short.

15 Car accident. While she was in

16 recovery, her trusted assistant, basically,

17 embezzled all her money. Husband died.

18 Hurricane Ike, lost her house. And it was just a

19 series of events.

20 And I believe that when Raul testified

21 the other day, that her situation was such a

22 unique situation, it was because of that. And

18

1 that is why she didn't have a copy of the

2 contract. We didn't have a copy of the contract

3 because Marian Oshita had not given us any of the

4 records.

5 And I explained that to her, you know,

6 but she remembers Marian and doing all of that.

7 So, that was the reason her response had been so

8 delayed and it took us so long to get everything

9 together for Maureen.

10 BY MR. BOYDSTON:

11 Q And did Ms. Millen volunteer to you

12 that she recalled Marian Oshita didn't sign the

13 contract?

14 A Yes, she remembered everything about

15 it.

16 MR. BOYDSTON: Nothing further, Your

17 Honor.

18 JUDGE BARRETT: Could you just pull

19 that microphone a little bit closer to you?

20 THE WITNESS: There? Uh-hum. Okay?

21 JUDGE BARRETT: That probably will

22 help. Thank you.

19

1 MR. BOYDSTON: I have nothing further,

2 Your Honor.

3 JUDGE BARRETT: Thank you, Mr.

4 Boydston.

5 Mr. Olaniran?

6 MR. BOYDSTON: Oh, I beg your pardon,

7 Your Honor. I wanted to move that Exhibit 113 be

8 entered into evidence. That was the last letter

9 that I started with this morning.

10 MS. FLOVNIK: No objection.

11 MR. MacLEAN: No objection from the

12 SDC.

13 JUDGE BARRETT: Exhibit 113 is

14 admitted.

15 MR. BOYDSTON: Thank you, Your Honor.

16 [Whereupon, the document marked as

17 IPG Exhibit No. 113 for

18 identification was received in

19 evidence.]

20 CROSS-EXAMINATION

21 BY MR. OLANIRAN:

22 Q Good morning, Ms. Vernon. My name is

20

1 Greg Olaniran. I'm counsel for MPAA.

2 You stated, I think yesterday, that

3 you are the owner of IPG?

4 A This is correct.

5 Q Okay. And 100 percent owner or --

6 A Ninety-nine percent.

7 Q Ninety-nine percent?

8 A Yes.

9 Q And I think the 1 percent is held by

10 your mother, is that correct?

11 A That's correct.

12 Q Okay. And what are your

13 responsibilities as owner?

14 A Well, a variety of things. Like I

15 said, I deal a lot with the claimants. I try to

16 get programming information, go through lots and

17 lots of paperwork, correspond through email, go

18 through filings; basically, work jointly with

19 Raul. Let's see, accounting information,

20 banking, all over the place.

21 Q Okay. And you acquired interest in

22 IPG in March of 2005, is that correct?

21

1 A That's correct.

2 Q And prior to your acquisition of

3 interest, you didn't have any involvement

4 whatsoever in IPG? Is that --

5 A No, I did not.

6 Q Okay. And, in fact, in prior

7 testimony, I think it was, when I asked you about

8 how you were able to determine what had gone on

9 in IPG prior to your acquisition, you responded,

10 and I quote, "Just from what Raul Galaz had told

11 me." Do you remember that?

12 A I'm not sure, but if it's testimony --

13 the deposition that we were in that time in

14 California?

15 Q Yes.

16 A Okay. Yes. Yes, yes.

17 Q Okay.

18 A Yes, that would be, yes, correct.

19 Q So, that is how you acquired most of

20 what you knew, at least upon joining IPG, right?

21 A Yes. At that time, yes.

22 Q Okay.

22

1 A Yes.

2 Q And you didn't interact with claimants

3 before --

4 A Before that? No.

5 Q -- before that? No?

6 A Not at all.

7 Q And no correspondence, no telephone

8 calls, or any of that sort of thing?

9 A Nothing before that time.

10 Q Okay. So, with respect to claims that

11 were filed before you acquired your interest in

12 IPG, you had no personal knowledge of the

13 veracity of those claims, is that correct?

14 A That's correct.

15 Q Okay.

16 A Yes.

17 Q And you just mentioned Ms. Oshita a

18 few minutes ago in connection with Ms. Millen.

19 And you stated that Ms. Oshita had not provided

20 you the contract, may not have provided you with

21 the contract that IPG had with Ms. Millen.

22 And to the extent that that is true,

23

1 it would also be the case that she had

2 termination letters that she had. She may not

3 have produced some of those, too, correct?

4 A Oh, certainly. Yes, we have no idea

5 what she has or has not.

6 Q Okay. And you have been involved with

7 filing of IPG's claims, correct?

8 A Correct.

9 Q Yes. Are you have trouble hearing me?

10 A Yes.

11 Q Okay.

12 A A little bit.

13 Q My voice is a little bit low. I'll

14 try to do better. Sorry about that.

15 In fact, you have been signing all of

16 IPG's claim, I think, since about the 2007

17 royalty year, correct?

18 A I believe so, yes.

19 Q Okay. And those were all joint

20 claims, correct?

21 A Yes.

22 Q Okay. And with the signature on each

24

1 joint claim, you're certifying under the penalty

2 of perjury that IPG is the duly-authorized agent

3 for each claimant on each joint claim, correct?

4 A That's correct.

5 Q And before you sign each joint claim,

6 you make sure that IPG does have authority to

7 represent each claimant listed on each joint

8 claim, correct?

9 A Correct.

10 Q Okay. And you have done so since you

11 have been signing IPG's claims since 2007,

12 correct?

13 A Correct.

14 Q Okay. And you make absolutely certain

15 that IPG has authority to represent each claimant

16 on each joint claims, right?

17 A Yes.

18 Q Okay.

19 A Yes.

20 JUDGE FEDER: Excuse me, please.

21 THE WITNESS: I'm sorry.

22 JUDGE FEDER: Just to clarify, earlier

25

1 had said 2007 claim year and, then, you said  
2 2007. Are you talking about claims filed in 2007  
3 for 2006 or a filing made for 2007?

4 MR. OLANIRAN: Fair point.  
5 Clarifying, Your Honor, I hope she was responding  
6 to the fact that she filed for IPG for the  
7 beginning of the 2007 royalty year.

8 BY MR. OLANIRAN:  
9 Q Is that correct? You began filing for  
10 IPG --

11 A Correct, yes, if I understand you.

12 Q Do you understand that question?

13 A Yes. Yes, I do.

14 Q Okay.

15 JUDGE BARRETT: That would be July  
16 2008?

17 THE WITNESS: Yes, right.

18 MR. OLANIRAN: Okay.

19 THE WITNESS: Yes.

20 MR. OLANIRAN: Thank you, Your Honor.

21 BY MR. OLANIRAN:

22 Q And is it fair to say that in more

27

1 document wasn't entered.

2 JUDGE BARRETT: Well, he hasn't asked  
3 a question yet. He just asked her to look at the  
4 exhibit. That's all we're doing right now.

5 MR. BOYDSTON: Fair enough.

6 THE WITNESS: Yes, I've found it.

7 BY MR. OLANIRAN:

8 Q Will you please take a few seconds  
9 just to flip through the document, just to  
10 familiarize yourself with it?

11 (Witness looks at document.)

12 A Do you want me to read the whole  
13 thing?

14 Q No. I just wanted to make sure. I  
15 think we're fine now, right?

16 A Okay.

17 Q Now do you recognize the document?

18 A Yes, I had seen it when you guys  
19 provided it.

20 Q Okay. So, you've had a chance to read  
21 it?

22 A Yes.

26

1 recent times you have become more careful of your  
2 duties with respect to filing claims because of  
3 all of the various challenges that have been  
4 raised IPG's representation of authority?

5 A Oh, most certainly.

6 Q Okay.

7 A Yes.

8 Q And with such extra attention to your  
9 filings, we should not find a claimant on any of  
10 IPG's joint claims that IPG does not have an  
11 authority to represent, is that right?

12 A Not to my knowledge.

13 Q Okay. And would you please turn to  
14 Exhibit, premarked it as 307 of the MPAA binder?

15 MR. BOYDSTON: Your Honor, this is not  
16 in evidence, and we had objected to it previously  
17 because Feed the Children is not involved in this  
18 matter and really has no place here.

19 JUDGE BARRETT: It hasn't been offered  
20 into evidence, either, Mr. Boydston.

21 MR. BOYDSTON: Well, in the previous  
22 exhibits we haven't allowed questioning where the

28

1 Q Okay.

2 A Briefly.

3 Q Would you please tell us what the  
4 document is?

5 MR. BOYDSTON: Your Honor, I object.  
6 This doesn't respond to anything that was in the  
7 direct examination whatsoever. And on top of  
8 that, it's not relevant. It is outside the scope  
9 and it is not relevant. That is my objection.

10 JUDGE BARRETT: Overruled.

11 MR. BOYDSTON: Well, Your Honor, I  
12 mean, it is not -- I ask no questions on this.

13 JUDGE BARRETT: Mr. Boydston, we don't  
14 even know what the line of questioning is yet.  
15 It's just a document that has been identified.  
16 Can you let Mr. Olaniran ask a question before  
17 you object?

18 THE WITNESS: It's a Notice of  
19 Termination.

20 BY MR. OLANIRAN:

21 Q And a Notice of Termination --

22 A Of November 25th, 2014. So, not that

29

1 long ago.

2 JUDGE BARRETT: I'm sorry, my 307 is  
3 -- yes, it is in the form of a pleading. Are we  
4 looking at the same thing?

5 MR. OLANIRAN: Yes, we are.

6 JUDGE BARRETT: Okay. All right. Go  
7 ahead.

8 BY MR. OLANIRAN:

9 Q I'm sorry, I don't know if I cut you  
10 off or not. You said it was a notice?

11 A Yes. Yes, I said it's a Notice of  
12 Termination dated November 25th, 2014.

13 Q And it is a pleading that was filed  
14 with the judges, correct?

15 A Correct. It looks like it.

16 Q Okay. And who filed that pleading?

17 MR. BOYDSTON: Objection, Your Honor.  
18 That calls for speculation. She didn't file it,  
19 unless he must establish that.

20 JUDGE BARRETT: Sustained.

21 BY MR. OLANIRAN:

22 Q Can you tell from reviewing the

31

1 MR. BOYDSTON: Objection. No. 1, it  
2 is beyond the scope. No. 2, it's not relevant to  
3 this proceeding. There is no claim for this  
4 entity in this proceeding, and I don't see what  
5 its relevance is.

6 MR. OLANIRAN: It's impeachment, Your  
7 Honor.

8 MR. BOYDSTON: I don't know who it is  
9 impeaching.

10 JUDGE BARRETT: Well, it can only be  
11 impeaching the witness who is on the stand, or  
12 attempting to do so.

13 MR. BOYDSTON: And I don't see how it  
14 impeaches anything that Ms. Vernon just said.

15 JUDGE BARRETT: We don't know that  
16 yet, do we, because we haven't heard any  
17 questions about it?

18 MR. BOYDSTON: Fair enough. For  
19 impeachment, that doesn't overcome the objection  
20 for relevance necessarily.

21 JUDGE BARRETT: Overruled.

22 MR. BOYDSTON: I mean, there might be

30

1 document who filed the pleading?

2 MR. BOYDSTON: Objection, Your Honor.  
3 The document would speak for itself. We don't  
4 need her comment.

5 JUDGE BARRETT: Sustained.

6 BY MR. OLANIRAN:

7 Q Do you know if your counsel was served  
8 with a copy of that document?

9 MR. BOYDSTON: Objection, Your Honor.  
10 Again, speculation. How would she know what I  
11 have been served with?

12 JUDGE BARRETT: Overruled.

13 THE WITNESS: No, I don't know.

14 BY MR. OLANIRAN:

15 Q Would you please go to the last page,  
16 page 8 of the filed document itself?

17 MR. BOYDSTON: Your Honor, I'll  
18 stipulate I was served with this.

19 JUDGE BARRETT: Thank you.

20 MR. OLANIRAN: Your Honor, I would  
21 like for admission of Exhibit 307 as a public  
22 record.

32

1 an offer of proof as to why it's relevant to  
2 impeach.

3 JUDGE BARRETT: Overruled.  
4 Go ahead.

5 THE WITNESS: I'm not sure exactly  
6 what page you are talking about. The last page  
7 of 307 or --

8 BY MR. OLANIRAN:

9 Q That's fine, Ms. Vernon. Mr. Boydston  
10 stipulated that he was served --

11 A Oh, okay.

12 Q -- with the document.

13 MR. MacLEAN: Your Honor, I apologize.  
14 I wasn't clear. Is 307 admitted into evidence?

15 JUDGE BARRETT: Not yet.

16 MR. MacLEAN: I thought that Mr.  
17 Olaniran --

18 MR. OLANIRAN: I did move it, move for  
19 admission.

20 MR. MacLEAN: -- had moved it into  
21 evidence, and that you overruled the objection.

22 JUDGE BARRETT: Oh, so I did. So I



33

1 did. 307 is admitted.

2 MR. OLANIRAN: Thank you, Your Honor.

3 MR. BOYDSTON: Your Honor, just so I

4 am clear on the record, I have two objections or

5 I have two bases for both of those objections.

6 One, it is irrelevant because this

7 entity is not a party to this action.

8 JUDGE BARRETT: Understood.

9 MR. BOYDSTON: And two, I don't

10 remember what two was. But, for that one, I

11 think you did the ruling.

12 Well, I guess I would put it this way:

13 I object because this essentially just like a

14 character witness in that they have no connection

15 to this action whatsoever. It would be no

16 different than if they found IPG's landlord and

17 brought the landlord in to say, "IPG is late on

18 its rent."

19 I mean, it's got no connection to

20 these claims at issue. So, I don't see how it is

21 relevant. That's my objection.

22 JUDGE BARRETT: Overruled.

34

1 MR. OLANIRAN: Thank you, Your Honor.

2 [Whereupon, the document marked as

3 MPAA Exhibit No. 307 for

4 identification was received in

5 evidence.]

6 BY MR. OLANIRAN:

7 Q Now, Ms. Vernon, Feed the Children has

8 been an IPG claimant both years, is that correct?

9 A Yes.

10 Q And just in general -- and tell me if

11 you understand this -- this document seeks to

12 replace IPG with MPAA for representation in the

13 course of this proceeding, is that right?

14 A That's my understanding of the

15 document.

16 Q Okay. And I want you to flip a few

17 pages forward until you get to the affidavit by

18 Travis Arnold. Do you see that?

19 A One second.

20 MR. BOYDSTON: I'm sorry, what was the

21 reference?

22 MR. OLANIRAN: Travis Arnold's

35

1 affidavit.

2 JUDGE BARRETT: For the record, it is

3 entitled, "Declaration". Are we talking about

4 the same document, declaration of Travis Arnold?

5 MR. OLANIRAN: I'm sorry, it's the

6 declaration of Travis Arnold.

7 THE WITNESS: Yes, I'm there.

8 BY MR. OLANIRAN:

9 Q Okay. And then, just flip about four

10 pages forward to Exhibit 1 to that declaration.

11 Are you there?

12 A Just a second. Okay.

13 Q And Exhibit 1 to that declaration is

14 an email that's dated July 1st, 2014, from a Mary

15 Rasenberger. It's to several people. Do you see

16 that?

17 A Uh-hum.

18 Q And the email recipient includes

19 Worldwide SG and Mr. Boydston. Do you see that?

20 A Yes, I do.

21 Q Now who is Mary Rasenberger? Do you

22 know?

36

1 A She is one of the attorneys for Feed

2 the Children now. I don't know how long she has

3 been on, but she's there with them now.

4 Q Okay. So, she sent an email to at

5 least you and Mr. Boydston, among others,

6 correct?

7 A Pardon me?

8 Q She sent this email to you and Mr.

9 Boydston, among people, correct?

10 A Well, it's actually sent to Raul and

11 Brian, but it's sent on our website.

12 Q This is the official email for IPG, is

13 it not?

14 A Yes, it's the email address.

15 Q Okay.

16 A Yes.

17 Q Okay. And would you please read the

18 text of that email into the record, please?

19 A "Dear Brian and Raul,

20 "We are writing on behalf of Feed the

21 Children to formally notify you that FTC has

22 elected to terminate Independent Producers

37

1 Group's representation of FTC, including under  
2 the mandate agreement signed by Larri Sue Jones  
3 on July 16th, 2001, and the extension agreement  
4 signed by her on May 20th, 2002 (collectively,  
5 the mandate agreement). Accordingly, we request  
6 that IPG refrain from filing any claim on behalf  
7 of FTC for any retransmission royalties for the  
8 2013 calendar year or for any future years.

9 "The foregoing is not intended to be  
10 an acknowledgment or ratification of the validity  
11 of the mandate agreement or any other agreement  
12 between FTC and IPG, nor is it intended to be a  
13 full statement of my client's positions, rights,  
14 or remedies, all of which FTC expressly  
15 reserves."

16 Q Okay. Thank you.

17 A "Best, Mary". Sorry.

18 Q Okay. Now so, this email does two  
19 things. First, it terminates IPG's  
20 representation of Feed the Children as of July  
21 1st, correct?

22 MR. BOYDSTON: Objection, Your Honor.

38

1 That calls for a legal conclusion as to whether  
2 or not it is, in fact, a termination or not.

3 JUDGE BARRETT: Sustained.

4 BY MR. OLANIRAN:

5 Q What is your understanding of what  
6 this email does?

7 A Well, it tells me she's attempting to  
8 terminate.

9 Q You don't think she's actually  
10 terminating, if I understand what you are saying,  
11 correct?

12 MR. BOYDSTON: Objection, Your Honor.  
13 He is trying to get her to make a legal  
14 conclusion. She said what she thinks it says,  
15 and I think that is a sufficient answer.

16 BY MR. OLANIRAN:

17 Q What else, is there anything else you  
18 think she is doing with this email besides  
19 attempting to terminate IPG?

20 A Trying to effect something, putting us  
21 on notice. I'm not sure.

22 Q Okay. Do you --

39

1 A I don't know what you're going for.

2 Q I'm sorry. Did you finish? I'm  
3 sorry, I may have cut you off. Okay.

4 Do you think it also directs IPG not  
5 to file any claims on behalf of Feed the Children  
6 for 2013 and future years?

7 A For 2013?

8 Q I'm sorry, for the 2013 royalty year  
9 and going forward.

10 A Possibly. I mean, it's dated July  
11 1st, 2014. Honestly, well, yes, I mean, you  
12 know, she says 2013 or prospectively.

13 Q I'm not sure --

14 A In her email she says 2013.

15 Q When are the claims for the 2013  
16 royalty year due? Or when were they due to be  
17 filed?

18 A In 2014, July 2014.

19 Q Okay.

20 A Yes.

21 Q And so --

22 A That month.

40

1 Q So, you would have filed in July 2014  
2 --

3 A Correct.

4 Q -- the claims for the 2013 royalty  
5 years?

6 A Correct.

7 Q And she's directing you here, is she  
8 not, that you not file for Feed the Children a  
9 claim for the 2013 royalty year?

10 A That is correct.

11 Q Okay. Thank you.

12 And IPG did not produce this  
13 termination, this email, in discovery, did it?

14 A I don't know.

15 Q Do you know whether, after the email  
16 was received, it was produced, even if it was  
17 after discovery?

18 A No, I don't, but --

19 Q You don't know if it was produced at  
20 all to either SDC or MPAA?

21 A I do not know.

22 Q Okay.

41

1 MR. OLANIRAN: Approach, Your Honor?  
 2 JUDGE BARRETT: You may.  
 3 BY MR. OLANIRAN:  
 4 Q Ms. Vernon, I have just provided you  
 5 with the document premarked --  
 6 MR. BOYDSTON: Your Honor, if I may,  
 7 we'll stipulate that IPG filed July claims in  
 8 2014 for the 2013 year on behalf of Feed the  
 9 Children. It's not in dispute.  
 10 JUDGE BARRETT: Okay. Thank you.  
 11 MR. MacLEAN: Your Honor?  
 12 JUDGE BARRETT: Mr. MacLean?  
 13 MR. MacLEAN: I will not agree to that  
 14 stipulation.  
 15 JUDGE BARRETT: Okay. Do you want to  
 16 inquire further since Mr. Olaniran, his point  
 17 seems to have been made?  
 18 MR. MacLEAN: Your Honor, if this is  
 19 a point that Mr. Olaniran would like to make,  
 20 then I would ask that it be made based on  
 21 documents in evidence, rather than by  
 22 stipulation.

42

1 MR. BOYDSTON: Your Honor, I object.  
 2 That's silly. Your Honor, I actually --  
 3 JUDGE BARRETT: That's not a legal  
 4 basis for an objection, unfortunately, Mr.  
 5 Boydston.  
 6 MR. OLANIRAN: Just a quick response,  
 7 Your Honor. I would actually prefer to have the  
 8 document omitted into evidence.  
 9 JUDGE BARRETT: You may offer it, once  
 10 it's identified and marked.  
 11 What's the next number?  
 12 JUDGE BARRETT: The next number, we  
 13 may need to ask the clerk.  
 14 THE CLERK: 356 and 357 then.  
 15 JUDGE BARRETT: Which do you want to  
 16 be which?  
 17 MR. OLANIRAN: I am just going to go  
 18 back to that --  
 19 JUDGE BARRETT: Oh, as one, one  
 20 number?  
 21 MR. OLANIRAN: No, two numbers.  
 22 MS. PLOVNICK: So, let's call the

43

1 cable claim 356 and the satellite 357 then.  
 2 JUDGE STRICKLER: Okay, who was 356?  
 3 MS. PLOVNICK: Cable is 356; satellite  
 4 is 357. Cable is 356; satellite is 357, and we  
 5 are going to get the clerk stickers on those  
 6 right now.  
 7 JUDGE BARRETT: You have the copies?  
 8 [Whereupon, the documents  
 9 were marked as MPAA Exhibit  
 10 Nos. 356 and 357 for  
 11 identification.]  
 12 JUDGE BARRETT: Here you are, Ms.  
 13 Vernon. These have the clerk's sticker on them.  
 14 THE WITNESS: Okay.  
 15 BY MR. OLANIRAN:  
 16 Q Ms. Vernon, do you have in front of  
 17 you Exhibit premarked as Exhibit No. 356?  
 18 A Uh-hum.  
 19 Q And could you please identify that  
 20 exhibit for the record?  
 21 A Joint Claim for Cable Retransmission  
 22 Royalty Fees, 2013.

44

1 Q Okay. And that is true and correct  
 2 copy of the joint claim you filed on IPG's behalf  
 3 on July 31, 2014 for the 2013 cable royalty year,  
 4 correct?  
 5 A Correct.  
 6 Q Whose handwritten notes are on that  
 7 document?  
 8 A Those are Raul's, Raul's writing.  
 9 MR. OLANIRAN: I move to admit Exhibit  
 10 356, IPG's joint claim for cable royalty fees for  
 11 2013.  
 12 MR. MacLEAN: No objection, Your  
 13 Honors.  
 14 MR. BOYDSTON: No objection.  
 15 JUDGE BARRETT: 356 is admitted.  
 16 [Whereupon, the document marked as  
 17 MPAA Exhibit No. 356 for  
 18 identification was received in  
 19 evidence.]  
 20 JUDGE BARRETT: May I ask, Ms. Vernon,  
 21 you said the handwritten notes are Mr. Galaz's  
 22 notes, but do you mean filling in the blanks is

45

1 his handwriting or the handwritten notes that are  
2 in boxes in the margins?

3 THE WITNESS: Well, some of it is his  
4 on some of these other things, because I had  
5 input in the stations, but definitely the boxes  
6 are his.

7 JUDGE BARRETT: Okay, thank you.

8 BY MR. OLANIRAN:

9 Q And, Ms. Vernon, let's --

10 A But the signature is mine.

11 Q Oh, I'm sorry.

12 A I'm sorry.

13 JUDGE BARRETT: Thank you.

14 BY MR. OLANIRAN:

15 Q Ms. Vernon, just stay with Exhibit 356  
16 for a second. There is an attachment to the  
17 claims form itself.

18 A The exhibit?

19 Q Yes, the exhibit. And that would be  
20 the list of claimants that IPG purports to be  
21 duly authorized to represent, is that right?

22 A That's correct.

46

1 Q And if you go to item No. 60 on that,  
2 and that would be Feed the Children that IPG has  
3 on its list of joint claimants?

4 A Correct.

5 Q Okay.

6 JUDGE BARRETT: Mr. Olaniran, I think  
7 we already had that --

8 MR. OLANIRAN: Okay.

9 JUDGE BARRETT: -- by stipulation.

10 So, if you just want to get the documents  
11 admitted, we can just do it that way.

12 MR. OLANIRAN: Good. Good.

13 BY MR. OLANIRAN:

14 Q Let's go through it. You have in  
15 front of you Exhibit, premarked as Exhibit 357.

16 A Yes.

17 Q Could you please identify the exhibit  
18 for the record?

19 A Joint Claim for Satellite  
20 Retransmission Royalty Fees, 2013.

21 Q And is that a true and correct copy of  
22 the satellite, the joint claim for satellite

47

1 retransmission royalties filed by IPG?

2 A Yes, it is, right.

3 Q And I had asked you about the  
4 handwriting on the cable claim. Whose  
5 handwriting is on the satellite claim?

6 A The same as with the cable.

7 Q Okay. And Feed the Children is also  
8 identified as a joint claimant for IPG on this  
9 document also, correct?

10 A On line 16.

11 Q All right.

12 MR. OLANIRAN: Move to admit Exhibit  
13 357, Your Honor.

14 MR. MacLEAN: No objection.

15 MR. BOYDSTON: No objection.

16 JUDGE BARRETT: 357 is admitted.

17 MR. OLANIRAN: Okay.

18 [Whereupon, the document marked as  
19 MPAA Exhibit No. 357 for  
20 identification was received in  
21 evidence.]

22 BY MR. OLANIRAN:

48

1 Q Now, Ms. Vernon, you spoke both  
2 yesterday and I think a little bit today, one of  
3 your main responsibilities is dealing with these  
4 confirmations of engagement, correct?

5 A Say it again? I'm sorry.

6 Q I said one of your responsibilities  
7 with respect to preparing for this proceeding is  
8 dealing with the confirmations of engagement  
9 forms that you sent to claimants, correct?

10 A You mean the acknowledgment forms?

11 Q The acknowledgment --

12 A Yes.

13 Q Some of them, I believe, were titled  
14 "Confirmations," or are they the same, but that  
15 is what I'm referring to.

16 A Right.

17 Q Is it okay, do you prefer for me to  
18 call them "acknowledgments" or --

19 A That's what I call them.

20 Q Okay. And these acknowledgments ask  
21 the email recipient to confirm IPG's  
22 representation of the recipient, is that right?

49

1 A Correct.

2 Q For all of the relevant years, in  
3 some cases one particular time period and in  
4 others --

5 A Sometimes it's one year; sometimes  
6 it's ten, yes.

7 Q And you sent all of the email requests  
8 and accompanying confirmation forms to the  
9 claimants, correct?

10 A Well, they get sent out, they get  
11 emailed out. It's a mass email.

12 Q It's a mass email?

13 A Most of the time, yes.

14 Q How exactly did that work? I get that  
15 you authored the email, and then, you have data  
16 person, so they are merged?

17 A Yes. As I was saying the other day or  
18 yesterday, I guess, our programmer, Kyle, is able  
19 to merge the clients' information, email  
20 addresses, and things like that, you know, and  
21 then, merge it with whatever text we want him to  
22 send. And then, he sends them all out.

50

1 Q And so, basically, you author the text  
2 and he does his magic and sends it out to your  
3 intended recipients, correct?

4 A Right. Yes. And it goes out from our  
5 email address.

6 Q Okay. And you stated yesterday that  
7 this was really about a belt-and-suspenders  
8 approach because you didn't really believe that  
9 you needed to send out the confirmation. Is that  
10 a fair characterization of your --

11 A Oh, well, with some, yes; with some,  
12 no. We felt, well, we really had all that we  
13 needed. You know, some we thought, well, you  
14 know, it would probably be a good idea to have  
15 more firm confirmation.

16 Q I'm not sure I'm clear on what you're  
17 saying. You're saying, for some claimants, it  
18 was a belt-and-suspenders approach, and then, for  
19 other claimants or for other intended recipients,  
20 you may have needed that confirmation? Is that  
21 right?

22 A Well, not really. It's more of some

51

1 things are more important than others. I mean,  
2 some we had so much correspondence and so much  
3 backup. And like I was saying yesterday, you  
4 know, and the mandate agreements and all of that.  
5 But some, you know, we had the extension  
6 agreement, but not the mandate agreement. You  
7 know, there were bits and pieces that were  
8 missing, even though we did have correspondence.  
9 And we felt, well, it wouldn't hurt; it would be  
10 better if we had this additional acknowledgment  
11 as well.

12 Q So, whether or not you felt  
13 acknowledgments were necessary to be sent to a  
14 recipient depended on the number of documents  
15 that you had for that recipient?

16 A Well, no, not necessarily. It just  
17 meant that some may have taken a little bit more  
18 priority. You know, it was more of a judgment  
19 call than anything else.

20 And, too, it had to do with time and  
21 necessity. I mean, there's kind of a short  
22 window of time for getting all of the -- by the

52

1 time we get the data of the program list and  
2 trying to get all of the programs identified on  
3 the program list from all of the different  
4 claimants, it takes a lot of time. And there is  
5 a pretty short window to try to contact them all  
6 and do that in all that period of time.

7 So, some of them, you know, even  
8 though the acknowledgment letters had gone out to  
9 them along with the Excel spreadsheets, you know,  
10 there were some that it got to a point where I  
11 don't even care about the acknowledgment letters  
12 because they weren't that important, anyway.  
13 Like I said, it was more of a belt-and-suspenders  
14 thing.

15 You know, my main focus was make sure  
16 and get their programs identified. Yes, so a lot  
17 of them, I just, you know, if they sent the  
18 programs, but they didn't send the  
19 acknowledgment, that was fine. I mean, they were  
20 clearly cooperating.

21 Q I understand, and I was merely trying  
22 to determine what factors you considered before

53

1 deciding whether to send it to a particular  
2 recipient, a belt-and-suspenders approach versus  
3 sending to a recipient that you felt you needed  
4 to. And I was trying to figure out, I was trying  
5 to get you to articulate the distinguishing  
6 factor between those that you considered  
7 necessary to send to versus those that you  
8 considered discretionary to send the emails to.

9 A Yes. There wasn't any kind of set  
10 identifying factor with that. You know, pretty  
11 much, just like all the other mass emails,  
12 everything got sent. Some of them got them; some  
13 of them did not, you know, because it's the AOL  
14 account or their emails have changed or the  
15 contact person is no longer at the company. So,  
16 I would have to get on the phone and call them  
17 and get all the new contact information. And  
18 that is one of the things that just takes so much  
19 time.

20 Q Do you recall -- you provided a  
21 declaration that was, I think it has been  
22 admitted into evidence probably a couple of times

54

1 already -- but do you remember doing a  
2 declaration with regard to this acknowledgment?

3 A Well, we have a declaration, but I  
4 didn't think it got admitted.

5 MR. BOYDSTON: Your Honor, just to  
6 help, we did attach a declaration as an exhibit  
7 here, but I didn't offer it even further because  
8 she is here, and I understand the Court's view on  
9 that. But I don't know that that is what Mr.  
10 Olaniran is referring to or not.

11 JUDGE BARRETT: I think he just asked  
12 a yes-or-no question: did you sign a  
13 declaration?

14 MR. BOYDSTON: I'm just curious what  
15 he is referring to; that's all.

16 JUDGE BARRETT: Okay.

17 BY MR. OLANIRAN:

18 Q Ms. Vernon, could you please take a  
19 look at Exhibit 308 --

20 A Okay.

21 Q -- in one of the orange cover binders?  
22 And then, look --

55

1 A Your declaration?

2 Q I'm sorry?

3 A Your declaration?

4 Q Yes.

5 A Okay.

6 Q And there are sub-exhibits to that  
7 declaration. So, if you can flip to tab 26  
8 within 308?

9 (Pause.)

10 Are you there?

11 A Just about. Sorry. There's a lot  
12 here. Okay. All right.

13 Q And that is in tab 26 of Exhibit 308,  
14 is your declaration, is the declaration of Denise  
15 Vernon in response to order of July 30, 2014. Do  
16 you see that?

17 A Yes.

18 Q And you go to paragraph 2 of that  
19 exhibit, I mean of the first page. Do you see  
20 that last sentence?

21 A Paragraph 2, the last sentence of  
22 paragraph 2 on the second page?

56

1 Q The last sentence on the first page.  
2 I'm sorry.

3 A The first page?

4 "Although IPG does not believe that  
5 such documents were necessary, their existence  
6 contradicts any assertion that" -- and then, it  
7 goes on to the next page -- "that IPG was not  
8 granted authority to represent the signatory  
9 claims for the calendar years indicated on such  
10 documents."

11 Q Okay. So, the distinction that we  
12 just talked about was not really made in that  
13 declaration, is not made in this declaration, is  
14 it, about confirmations that you considered  
15 necessary versus the ones that you considered  
16 discretionary?

17 A Can you --

18 MR. BOYDSTON: Objection, Your Honor.  
19 The document speaks for itself.

20 JUDGE BARRETT: Sustained.

21 MR. OLANIRAN: That's fine.

22 MR. BOYDSTON: And also, Your Honor,

57

1 I think the question misstated the testimony  
2 today. The testimony today, Ms. Vernon said in  
3 some detail it was belt and suspenders. She  
4 didn't necessarily say "necessary," for what it's  
5 worth.

6 JUDGE BARRETT: Sustained.

7 BY MR. OLANIRAN:

8 Q Now, Ms. Vernon, you provided MPAA  
9 with a list of the persons and entities to whom  
10 the confirmation of engagement emails were sent,  
11 do you recall?

12 A Yes. Well, yes, we provided  
13 everything we have.

14 Q And so, the lists you would have  
15 provided were to us, were they lists of all of  
16 the intended recipients of the acknowledgments?

17 A Pardon me? All of what?

18 Q The emails, the document that you  
19 provided to us, to MPAA, identified all of the  
20 intended recipients of the acknowledgment?

21 A Yes, I believe so.

22 Q Okay. And were the emails to sent to

59

1 know, if it went someplace, to some email that  
2 wasn't an IPG claimant, then, more than likely I  
3 probably haven't had contact with them and I'm  
4 not going to be concerned if I don't hear from  
5 somebody I don't know something went to.

6 Q So, are you saying that you made  
7 particular efforts to eliminate from the list of  
8 intended recipients those that were not IPG  
9 claimants or are you saying that you did not?

10 A More than likely, I probably wasn't  
11 all that concerned with it. You know, my main  
12 concern certainly would be to make sure I'm  
13 contacting all of the IPG claimants. Yes, I don't  
14 want to leave those people out, you know. If  
15 some that aren't got thrown in there, you know,  
16 that's possible.

17 Q Now, how did you treat the recipients  
18 that did not respond to your email asking for  
19 acknowledgment of IPG's representation?

20 A As I had stated, that's when, you  
21 know, when we didn't get a response, that is when  
22 I would get on and see, okay, did the email get

58

1 only IPG claimants?

2 A Well, they were intended to go to only  
3 IPG claimants, but, you know, there's some that  
4 we don't represent anymore that certainly could  
5 have been on our programmer's list that they had  
6 inadvertently been sent to, just like the thing  
7 that I had mentioned a little while ago where we  
8 erringly sent another Excel spreadsheet to some  
9 of the clients and said, "You have not  
10 responded." And they all called back, "What are  
11 you talking about? We filled out this  
12 spreadsheet." You know, I mean, stuff just gets  
13 done like that, you know.

14 Q Now how did you determine, what  
15 efforts -- strike that.

16 What efforts did you make, if any, to  
17 distinguish, to determine whether a recipient in  
18 the database was an IPG claimant?

19 A Oh, just kind of a one-by-one thing.  
20 I mean, if they are an IPG claimant and we've had  
21 contact with them, then if I don't get anything  
22 from them, then I know to contact them. You

60

1 sent back because it is not a good email address  
2 or did they just not respond, or what? So, I  
3 would have to go in further and see what the case  
4 was. And --

5 Q Let's say you do that -- oh, I'm  
6 sorry.

7 A Sorry. You know, and at that point,  
8 then I would try to remedy whatever the case was,  
9 you know, call them, write them, see if I have  
10 another contact name or number in my notes, and  
11 send an email to the next person to see if the  
12 other person is still there or not, yes.

13 Q Now let's say you do all that.

14 A Okay.

15 Q So, you now have 80 emails that you  
16 sent out, and you've gone through that process,  
17 and you still don't have a response from about 80  
18 of them. What do you do with that non-responding  
19 email recipient? Do you include that recipient  
20 as part of your IPG-represented claimants or do  
21 you just lift them out altogether?

22 A Well, it just depends on who it is.

61

1 You know, if it is someone that we have been  
2 doing business with and still have a contract  
3 with, you know, and we know what all of their  
4 programs are -- for instance, there are some that  
5 I really didn't need to get anything new from  
6 them because I had all of their information.  
7 They had in 2011 given me their full catalog from  
8 when they started up until 2011. So, clearly, I  
9 didn't need to get any new information from them  
10 for the point during 1999 to 2009 because I had  
11 all of their programs.

12 Q So, if I understand your testimony  
13 correctly --

14 A And if we already had an agreement  
15 with them as well, then I've got their program  
16 list. I've got the agreement. So, I didn't need  
17 anything new from them.

18 Q Okay. Okay. Then, if I understand  
19 your testimony correctly, you sent out the email,  
20 the first email. You didn't get a response.  
21 Perhaps you send out two or three additional  
22 emails. No response. You attempt phone calls.

62

1 No response.

2 But, based on the records that you  
3 have with you, you go ahead, without even having  
4 spoken to or have a two-way communication with  
5 the email recipient, you go ahead and include  
6 that claim, that entity, as an IPG claimant? Is  
7 that correct?

8 MR. BOYDSTON: Your Honor, I object,  
9 just misrepresenting her testimony, only to the  
10 extent that what she said is sometimes she might  
11 not have had a contact in this immediate moment,  
12 but that didn't bother her because she said she  
13 would have contact, if she had contact before  
14 that time, then she didn't feel it necessary to  
15 have contact right immediately at the time --

16 JUDGE BARRETT: Mr. Boydston, I  
17 appreciate that you think that you need to coach  
18 this witness, but please don't.

19 MR. BOYDSTON: Your Honor, I  
20 apologize. I was not attempting that whatsoever.

21 JUDGE BARRETT: Okay. Overruled. Ms.  
22 Vernon can answer the question the way she thinks

63

1 she can answer the question.

2 MR. BOYDSTON: Your Honor, I was just  
3 objecting to the form of the question; that's  
4 all.

5 JUDGE BARRETT: Overruled.

6 But, if you want to try again, I'm  
7 sure none of us remember the question, Mr.  
8 Olaniran. I think you set forth process. Maybe  
9 the better way to do it would be to ask the  
10 witness to set forth the process.

11 BY MR. OLANIRAN:

12 Q Then, let me, another attempt at the  
13 question. So, from my understanding of your  
14 testimony, you send out the first acknowledgment.  
15 You don't get a response. You send perhaps two  
16 or three additional emails. No response. And  
17 then, you attempt phone calls. No response.

18 But you have documents or you believe  
19 you have documents, or maybe you don't have any  
20 documents. And what do you do with that claimant  
21 that has not responded, given those set of  
22 circumstances?

64

1 MR. BOYDSTON: Your Honor, I  
2 apologize, but that's compound, because he said  
3 maybe you might have documents about the person;  
4 maybe you wouldn't.

5 JUDGE BARRETT: Sustained.

6 BY MR. OLANIRAN:

7 Q What if you go through the process and  
8 you don't have a document with IPG evidencing a  
9 representation of that claimant? What do you do?  
10 Do you -- I'm sorry. Go ahead.

11 A I don't know. They're all so  
12 different.

13 Q No, I'm asking --

14 A I can't give you a blanket answer for  
15 every --

16 Q No, I'm asking you a very specific --

17 A -- specific claimant, you know, but  
18 there are some that, if we hadn't heard from  
19 them, we didn't have any contact with them, or  
20 anything else, for years --

21 Q I'm not asking about those things.

22 A Well, that's what I'm trying to



65

1 explain.

2 Q But I'm asking a very specific  
3 situation, very specific.

4 A Okay.

5 Q You've gone through the process. You  
6 have no contact. They're not responding to you,  
7 and you have no document within IPG that suggests  
8 representation. Do you still include that  
9 claimant, that entity as an IPG claimant? Yes or  
10 no?

11 A Well, I guess I would have to say no  
12 because we don't include them if we have had no  
13 documents. I mean, they're included because we  
14 have documents, you know, correspondence, that  
15 sort of thing.

16 So, I mean, if there has been no  
17 correspondence ever, then they wouldn't be an IPG  
18 claimant to begin with.

19 Q What if there were an IPG claimant  
20 that terminated IPG before you ever got involved  
21 with IPG, but they remained in the database  
22 anyway? How do you know the intention of a

67

1 So far, so good?

2 A Okay.

3 Q Okay. And you rely on a document that  
4 does not contemplate the termination, correct?

5 A Right.

6 Q Is it possible that you can list a  
7 recipient like that as an IPG claimant?

8 MR. BOYDSTON: Your Honor, I have to  
9 object to the hypothetical, for the reason that  
10 what was left out is whether or not there is a  
11 post-termination right and contract or not, which  
12 is all important in that circumstance.

13 JUDGE BARRETT: But, again, Mr.  
14 Boydston, the question is posed to the witness,  
15 not to counsel.

16 MR. BOYDSTON: I understand, but --

17 JUDGE BARRETT: Please be seated.

18 MR. BOYDSTON: -- it is an incomplete  
19 hypothetical in that regard.

20 JUDGE BARRETT: Fine. Then, you can  
21 make that legal objection, but do not fill in the  
22 blank.

66

1 recipient such as that?

2 MR. BOYDSTON: Your Honor, I object.  
3 I think the question was, how do you know the  
4 intention of a recipient such as that, which I  
5 think calls for speculation.

6 MR. OLANIRAN: Let me rephrase the  
7 question.

8 BY MR. OLANIRAN:

9 Q If a recipient fired IPG, let's say in  
10 2003 -- so far, so good?

11 A Yes.

12 Q Okay. And they remained a part of  
13 your database because, for some reason, that  
14 database was not --

15 A Updated.

16 Q -- updated --

17 A Yes.

18 Q -- to delete that recipient.

19 A Uh-hum.

20 Q And you go through the acknowledgment  
21 process and you send them a batch of emails and  
22 followups. And the recipient does not respond.

68

1 MR. BOYDSTON: That's what I made.

2 JUDGE BARRETT: So, the incomplete  
3 hypothetical is sustained.

4 Ask the question again, please, Mr.  
5 Olaniran.

6 BY MR. OLANIRAN:

7 Q Well, you testified earlier that there  
8 may be in your database claimants that really  
9 don't belong there that are not IPG claimants,  
10 right? There are entities within your database  
11 that are not IPG claimants, correct?

12 MR. BOYDSTON: Your Honor, I think  
13 that misstates the testimony. I think she said  
14 that it is possible that emails may have gone to  
15 non-IPG claimants. That is different than saying  
16 that they're in the database, I think.

17 THE WITNESS: That's what I said. The  
18 emails may have --

19 JUDGE BARRETT: I think,  
20 unfortunately, we have used database and email  
21 listserv interchangeably up to this point. So,  
22 we are going to need even more clarification.

69

1 BY MR. OLANIRAN:

2 Q How do you determine the intention  
3 whether or not an email respondent that you had  
4 no communications with during the acknowledgment  
5 process actually intended to be represented by  
6 IPG, even though they didn't provide a response  
7 to you, in light of all of the attempts you made  
8 to contact them?

9 MR. BOYDSTON: I'm sorry, Your Honor,  
10 I just didn't understand that question.

11 THE WITNESS: I'm sorry, I don't,  
12 either. Can you say that again or --

13 BY MR. OLANIRAN:

14 Q If you have an email, if you have in  
15 your database, if you sent an email to a  
16 recipient and you went through the acknowledgment  
17 process, two or three emails, telephone calls,  
18 letters, whatever.

19 A Uh-hum.

20 Q You don't get a response from that  
21 entity at all. Are there circumstances in which  
22 you go ahead and include that entity as an IPG

70

1 claimant?

2 A Yes. It's just like I have said a  
3 moment ago. If I have had past correspondence  
4 with them, then, yes, that's not unusual. I've  
5 got a lot of them. I finally get a hold of them,  
6 and I ask them, "Well, why haven't you contacted  
7 me back?" Like, "Well, we gave you that  
8 information two years ago."

9 Q I'm not asking you about feedback, Ms.  
10 Vernon.

11 A But there are just circumstances like  
12 that.

13 Q Ms. Vernon, I am not asking about who  
14 you got a hold of.

15 A Okay.

16 Q My question is directed to the people  
17 you did not get a hold of. You have a situation  
18 where you had no communications during the  
19 confirmation process with the claimant, and you  
20 went ahead and included the claimant as an IPG-  
21 represented claimant -- I'm sorry, the recipient  
22 of an email as an IPG claimant.

71

1 MR. BOYDSTON: Objection, Your Honor.  
2 Asked and answered. She started her answer with  
3 "yes". I believe she answered "yes".

4 BY MR. OLANIRAN:

5 Q Ms. Vernon --

6 JUDGE BARRETT: Sustained.

7 BY MR. OLANIRAN:

8 Q Ms. Vernon, your name appeared on most  
9 of the mass emails to IPG claimants, is that  
10 right?

11 A Yes.

12 Q And during your testimony yesterday,  
13 you provided templates of different types of  
14 emails that you sent to the claimant, right?

15 A Uh-hum.

16 Q And now, some of the emails that you  
17 sent solicited information from the claimant with  
18 regard to titles?

19 A Program titles.

20 Q And as we just discussed, some of them  
21 had to do with preferring IPG's representation,  
22 correct?

72

1 A Correct.

2 Q And you used other emails to provide  
3 status updates for the different proceedings that  
4 IPG is engaged in within this retransmission  
5 royalty scheme, right?

6 A Right.

7 Q And sometimes you informed them about  
8 deadlines and procedural issues, right?

9 A Yes.

10 Q And would you agree that in  
11 communicating with claimants you have to be  
12 truthful?

13 A Yes.

14 Q Okay. And that if you're not truthful  
15 and honest in your accounts to your claimants,  
16 you will be doing them a disservice, right?

17 A I believe so.

18 Q And in all of your communications that  
19 you sent to IPG's claimants you were completely  
20 truthful, is that right?

21 A I was.

22 Q So, if one were to look at all of

73

1 those communications, your email updates or  
2 reports to the claimants, one should not find  
3 misleading information in those summaries, right,  
4 in those accounts, correct?

5 A I believe so, yes.

6 Q Let's look again at, let's go back to  
7 Exhibit 308.

8 A Okay.

9 Q I think we looked at 308 just a second  
10 ago.

11 A Yes.

12 Q And let's look at tab 27 this time.

13 A All right.

14 Q Do you see it?

15 A Yes.

16 Q And is this an example of one of your  
17 accounts that you provided to IPG-represented  
18 claimants?

19 A Yes.

20 Q Okay. And this is a report that  
21 appears to be after the evidentiary hearing in  
22 the 0003 proceeding, correct, but before the time

75

1 A Right. Right.

2 Q Now, just above that, the background  
3 section, in caps and bold it says, this text and  
4 caps and bold says, "Please note that the failure  
5 to execute the attached form acknowledgment  
6 could subject your company's claim to  
7 forfeiture."

8 Do you see that?

9 A Yes.

10 Q What did you mean by that?

11 A Well, basically, just what it says.  
12 I mean, if there's not a claim, then it means  
13 they're forfeiting their rights for whatever  
14 particular year.

15 Q But it's not true, though, is it, if  
16 the email recipient is not an IPG-represented  
17 claimant?

18 A Pardon me?

19 Q This statement is not true if the  
20 person or entity that received this email is not  
21 represented by IPG, is it?

22 A Well, if they're not represented by

74

1 of the termination, if you can tell?

2 A Yes, this would have been sent out  
3 in --

4 Q I'm going to direct --

5 A -- probably around March.

6 Q I'm sorry. March of what year?

7 A 2014.

8 Q Okay.

9 MR. BOYDSTON: Your Honor, I just want  
10 to point out this is the same as Exhibit 109 that  
11 is in evidence.

12 JUDGE BARRETT: Yes.

13 MR. BOYDSTON: Okay.

14 THE WITNESS: Thank you.

15 BY MR. OLANIRAN:

16 Q And if you look at the background  
17 section which says, "As noted in our recent  
18 correspondence to you on June 13, IPG appeared in  
19 Washington, D.C. for a five-day evidentiary  
20 hearing."

21 So, this is after the evidentiary  
22 hearing in the 0003 phase 2 proceeding, correct?

76

1 IPG, then, for one, we probably wouldn't send  
2 them the email to begin with. You know, if we  
3 did, it was an error. And, no, of course it  
4 would not be true.

5 Q Do you know whether that you sent an  
6 email to A&E Television?

7 A No, I don't.

8 Q Okay. Now let's go down, still in tab  
9 27. Under the background section, let's look at  
10 the third paragraph.

11 A Under background?

12 Q Yes.

13 A Okay.

14 Q And in the first sentence, you  
15 characterize the hearing as coming to counter-  
16 intuitive, inexplicable rulings. And later in  
17 that paragraph, you assert that claims were  
18 randomly dismissed. Do you see that?

19 A Yes.

20 Q And do you consider this a truthful  
21 account of the evidentiary hearing?

22 A Somewhat. You know, I doubt if

77

1 everybody is ever 100-percent pleased by any  
2 ruling, you know, that they get. But, yes, there  
3 were some instances where I felt that we had  
4 ample and adequate evidence and documents showing  
5 that these claimants were IPG claimants and had  
6 been for years and years and years and years.  
7 And some of those got dismissed.

8 I mean, well, Maureen Millen, you  
9 know, was an example. And so, there were plenty  
10 of instances where I had communicated fully with  
11 these people, and they had been cooperating with  
12 me during this entire time and cooperated with  
13 Raul long ago, that had gotten dismissed. So, I  
14 felt, yes, there were instances like that.

15 Q So, let me ask you a little bit  
16 differently. Do you think this is a completely  
17 truthful account of that proceeding?

18 A Completely truthful. Subjective  
19 maybe, but truthful.

20 Q Okay.

21 MR. OLANIRAN: Approach, Your Honor?

22 JUDGE BARRETT: Yes.

79

1 JUDGE BARRETT: Please be seated.

2 I apologize, I'm breaking the rule by  
3 bringing my coffee.

4 Mr. Olaniran?

5 MR. OLANIRAN: Thank you, Your Honor.

6 BY MR. OLANIRAN:

7 Q Ms. Vernon, before the break, we had  
8 talked about the extent to which your accounts to  
9 your claimants were completely truthful. And  
10 right after that, I handed you an exhibit  
11 premarked as 358. Do you recognize that  
12 document?

13 A Yes.

14 Q And please describe the document.

15 A It's an email regarding the  
16 proceedings for the June 2013.

17 Q Okay. And was this email prepared by  
18 you?

19 A Actually, Raul and I.

20 Q Okay. And it went out under your  
21 name, correct?

22 A Pardon me?

78

1 MS. PLOVNICK: I'm sorry. This isn't  
2 yet.

3 MR. OLANIRAN: Oh.

4 MS. PLOVNICK: It's been marked.

5 MR. OLANIRAN: It's just a whole bunch  
6 of stuff. I'm sorry.

7 MS. PLOVNICK: It's been marked. So,  
8 I mean, do you want me to --

9 MR. OLANIRAN: Let me ask a question.

10 MS. PLOVNICK: Okay.

11 [Whereupon, the document was  
12 marked MPAA Exhibit No. 358 for  
13 identification.]

14 JUDGE BARRETT: This is a good place  
15 to take our morning recess?

16 MR. OLANIRAN: Sure.

17 JUDGE BARRETT: Let's do that, a 15-  
18 minute recess.

19 MR. OLANIRAN: Thank you, Your Honor.

20 [Whereupon, the foregoing matter went  
21 off the record at 10:30 a.m. and went back on the  
22 record at 10:48 a.m.)

80

1 Q It went out under your name?

2 A Yes.

3 Q Okay.

4 MR. OLANIRAN: Move to admit Exhibit  
5 358, Your Honor.

6 MR. BOYDSTON: Your Honor, I object on  
7 several grounds.

8 One is relevance. This is an email by  
9 IPG to its claimants describing IPG's opinion as  
10 to the outcome of the 2000-2003 hearing. It has  
11 nothing to do with anything that was talked about  
12 in direct, and therefore, is outside of the  
13 scope.

14 In addition, it's irrelevant in the  
15 sense that this is not offered or is not a  
16 statement of truth or falsity. It's an opinion.  
17 And to the extent that there is a legitimate  
18 desire to impeach a witness, it should go to  
19 something that the witness has testified about.

20 And simply saying, "Well, we just want  
21 to know if you're telling a lie or have ever told  
22 a lie in your life," I don't think that's proper.

81

1 JUDGE BARRETT: Thank you, Mr.  
 2 Boydston.  
 3 Any objection, Mr. MacLean?  
 4 MR. MacLEAN: Your Honor, may I voir  
 5 dire?  
 6 JUDGE BARRETT: Yes.  
 7 VOIR DIRE EXAMINATION  
 8 BY MR. MacLEAN:  
 9 Q Ms. Vernon, I see at the top of this  
 10 page in the "From" and "To" lines, this is from  
 11 worldwidesg@aol.com. That is an email address  
 12 that you use?  
 13 A Yes.  
 14 Q Since January 23rd, 2014, did you send  
 15 this email on January 23rd, 2014?  
 16 A Apparently.  
 17 Q It is sent to Jean McBride, Paramount.  
 18 Did you send this email to Jean McBride at  
 19 Paramount?  
 20 A I'm guessing that was the case. If it  
 21 was sent to our claimants, then it was another  
 22 mass email.

82

1 Q That's at Paramount Pictures?  
 2 A I'm not really sure. I've never  
 3 spoken directly with a Jean McBride. So, as I  
 4 said, it was one of those mass emails that I'm  
 5 not sure exactly who this particular one went to  
 6 because I'm sure it went to hundreds.  
 7 Q The first line starts, "As the  
 8 designated representative of your company,..."?  
 9 A That is what the first line says.  
 10 MR. BOYDSTON: Your Honor, this is  
 11 going nowhere. I mean, we have already said this  
 12 is -- there is no dispute this has been written  
 13 by the witness.  
 14 MR. MacLEAN: Your Honor, I have no  
 15 objection to this exhibit.  
 16 JUDGE BARRETT: Okay. Thank you.  
 17 And, Mr. Olaniran, you're offering  
 18 this for what purpose?  
 19 MR. OLANIRAN: Impeachment purposes.  
 20 I had asked the witness about the accounts that  
 21 she makes to --  
 22 JUDGE BARRETT: You were asking, I

83

1 believe, about her truthfulness?  
 2 MR. OLANIRAN: Yes, Your Honor.  
 3 JUDGE BARRETT: And is there a  
 4 statement of fact in this email that would  
 5 impeach her truthfulness?  
 6 MR. OLANIRAN: Yes. Yes.  
 7 MR. BOYDSTON: Your Honor, I would  
 8 like to know what he is referring to because this  
 9 is a recitation of --  
 10 JUDGE BARRETT: I understand. You  
 11 don't have to give me a narrative, Mr. Boydston.  
 12 I am going to allow it provisionally,  
 13 but I have to find a fact statement in here, and  
 14 you have to point that out to me, Mr. Olaniran,  
 15 or it will be withdrawn.  
 16 [Whereupon, the document marked as  
 17 MPAA Exhibit No. 358 for  
 18 identification was provisionally  
 19 received in evidence.]  
 20 CONTINUED CROSS-EXAMINATION  
 21 BY MR. OLANIRAN:  
 22 Q Ms. Vernon, if you look at the third

84

1 paragraph of Exhibit 358 and you go to the second  
 2 line -- are you there?  
 3 A Yes.  
 4 Q You characterized the proceedings as  
 5 "pre-ordained, irrespective of what evidence was  
 6 presented at trial". Now what was your basis for  
 7 stating that the proceeding was pre-ordained?  
 8 MR. BOYDSTON: Your Honor, objection.  
 9 That is clearly a subjective expression of  
 10 opinion, not fact.  
 11 JUDGE BARRETT: Overruled.  
 12 THE WITNESS: Well, as I said, this  
 13 was something that Raul and I prepared. And I  
 14 can tell you at the time, then, even though on  
 15 the back page where it says, "While IPG  
 16 recognizes that this update might appear as sour  
 17 grapes," I can tell you there was a feeling a lot  
 18 of sour grapes at that time and it was very  
 19 touchy.  
 20 And I had told him that I thought this  
 21 might be a little -- some of his statements and  
 22 some of the sentences in there, you know, were

85

1 going a little too far, but, you know --

2 BY MR. OLANIRAN:

3 Q So, you have no basis --

4 A This was the feeling at the time. It  
5 was subjective.

6 Q You had no basis for stating that the  
7 proceeding were "pre-ordained, irrespective of  
8 what evidence was presented at trial"?

9 A Well, like I said, it was just an  
10 opinion, you know. I mean, there were --

11 Q Whose opinion?

12 A There was a thing -- well, everyone  
13 got different opinions, you know, but there was  
14 just a feeling, at least with myself, and I know  
15 Raul felt that way, too, that a lot of baggage  
16 was brought in to the trial, despite everything  
17 that had been presented at trial.

18 Q Let me ask you about the next line.  
19 This also stated that "The CRB issued an opinion  
20 that disregarded each and every argument made by  
21 IPG, no matter how obvious."

22 MR. BOYDSTON: Your Honor, for the

87

1 "extraordinarily tainted and how these figures  
2 were adopted by the CRB defies reason". And you  
3 are referring to the numbers that you talk about,  
4 the allocation numbers you talk about on the  
5 previous page.

6 What is your factual bases or basis  
7 for that characterization?

8 MR. BOYDSTON: Your Honor, the same  
9 objection.

10 JUDGE BARRETT: Noted.

11 THE WITNESS: Well, clearly, as we  
12 said in the previous paragraph, it just seemed  
13 extraordinarily skewed as compared to the  
14 percentage of the 1997 royalties.

15 BY MR. OLANIRAN:

16 Q Okay.

17 A And I think we described that pretty  
18 clearly in the previous paragraph.

19 Q So, in this account, though, you don't  
20 mention at all in this account that the judges  
21 found that Mr. Galaz's criminal history  
22 compromised his credibility? Did you mention

86

1 record, the same objection. I think this is an  
2 expression of subjective opinion, not fact.  
3 Therefore, I don't think it is appropriate for  
4 impeachment.

5 JUDGE BARRETT: Noted.

6 BY MR. OLANIRAN:

7 Q What is your basis for that statement?

8 A Well, the ruling. I mean, it felt  
9 like so many -- oh, like each and every argument  
10 we had made, you know, was disregarded.

11 Q Okay. So, that was just a feeling?  
12 You don't have a factual bases for that  
13 statement, right?

14 A Well, you know, we can get down and  
15 count exactly every single argument IPG made.

16 Q Are you trained as a lawyer?

17 A No.

18 Q Okay. Let's move on to the next one.  
19 If you flip over to paragraph one, two, three,  
20 four, paragraph five, which is the first  
21 paragraph on the following page, the very first  
22 sentence, you describe the CRB's decision as

88

1 that in here at all, in this email?

2 A Oh, in this email, no.

3 Q Okay.

4 A But our claimants are familiar --

5 Q That's fine. Let me finish.

6 A Okay.

7 Q Let me finish.

8 And you don't mention any of the  
9 judges' findings about the methodological  
10 problems that they had with IPG's presentation,  
11 do you?

12 MR. BOYDSTON: Your Honor, object, as  
13 being argumentative.

14 JUDGE BARRETT: Overruled.

15 THE WITNESS: No, we didn't get --

16 BY MR. OLANIRAN:

17 Q Okay. And --

18 A -- into the specifics of everything  
19 that was done at trial. I mean, we certainly  
20 weren't going to, nor I doubt if they would  
21 understand if we started getting into  
22 methodology.

89

1 Q Okay. And you don't actually mention  
2 also that IPG could not substantiate some of its  
3 representations, it representation of some of the  
4 claims? Do you mention that in here?

5 MR. BOYDSTON: Objection, Your Honor.  
6 Argumentative and the document speaks for itself.

7 JUDGE BARRETT: The latter objection  
8 is sustained.

9 BY MR. OLANIRAN:

10 Q Do you mention at all in this email  
11 that the judges found that IPG could not  
12 substantiate its representation of some of the  
13 claimants?

14 MR. BOYDSTON: Objection, Your Honor.  
15 The same objection. The document speaks for  
16 itself.

17 JUDGE BARRETT: Sustained.

18 MR. OLANIRAN: Okay.

19 BY MR. OLANIRAN:

20 Q In fact, do you mention at all in this  
21 email any of the problems that the judges had  
22 with IPG's presentation?

90

1 MR. BOYDSTON: Objection, Your Honor.  
2 The same objection. The document speaks for  
3 itself.

4 JUDGE BARRETT: Sustained.

5 Having heard the testimony, Exhibit  
6 358 is rejected.

7 [Whereupon, the document marked as  
8 MPAA Exhibit No. 358 for  
9 identification was rejected.]

10 MR. OLANIRAN: No further questions,  
11 Your Honor.

12 JUDGE BARRETT: Thank you.

13 Mr. MacLean, questions for Ms. Vernon?

14 MR. MacLEAN: Your Honor, I would  
15 like to just have one moment to collect the  
16 documents that I need.

17 JUDGE BARRETT: You may.

18 (Pause.)

19 MR. MacLEAN: All right. Thank you,  
20 Your Honor. I'm ready.

21 CROSS-EXAMINATION

22 BY MR. MacLEAN:

91

1 Q Good morning, Ms. Vernon.

2 I am Matthew MacLean. I represent the  
3 Settling Devotional Claimants.

4 Now I believe you testified that you  
5 are very careful to only file claims on behalf of  
6 claimants who have authorized IPG to file on  
7 their behalf, is that right?

8 A That's my intention.

9 Q Well, aside from being your intention,  
10 are you, in fact, very careful to file claims  
11 only on behalf of claimants who have authorized  
12 IPG to file?

13 A I try to be.

14 Q Have you ever filed a claim on behalf  
15 of a claimant that has sent IPG a termination?

16 A If I hadn't -- well, it's probably  
17 happened, but it just -- but, if we didn't know  
18 about the termination, then it could have  
19 happened. I mean, clearly, there have been some  
20 instances that we have seen here where people  
21 have come up with termination letters that we had  
22 no idea there had ever been a termination letter,

92

1 you know, for a particular client.

2 And I've been communicating with a lot  
3 of those clients to this day, and they never said  
4 anything about having once sent a termination  
5 letter, I'll say 10 years ago.

6 So, right, I mean, I don't do it  
7 before the fact, but if I filed a claim for them,  
8 it was because I had not known anything about  
9 them terminating.

10 Q So, you have filed claims on behalf of  
11 claimants who have terminated IPG?

12 A Not knowingly. I mean, if it was a  
13 valid termination.

14 Q So, Feed the Children you didn't know  
15 had terminated IPG at the time you filed a claim  
16 for the 2013 year?

17 A I don't know if we did or not, but it  
18 just depends on the contract.

19 Q All right, but I'm asking with respect  
20 to Feed the Children.

21 A I'm not sure. I know we filed a  
22 claim.

93

1 Q And --

2 A And I saw the termination letter that,

3 you know, was sent in July.

4 Q You received this termination letter

5 in July. You filed the claim later in July,

6 right?

7 A Correct.

8 JUDGE STRICKLER: Excuse me. If I may

9 ask, Ms. Vernon, the documents in question that

10 we referred to are 356 and 357 in evidence, and

11 you signed both of those right?

12 THE WITNESS: Correct.

13 JUDGE STRICKLER: And the date on both

14 of them is July 31st, 2013.

15 THE WITNESS: Right.

16 JUDGE STRICKLER: Did you in fact sign

17 those on July 31st, 2013 or 2014?

18 THE WITNESS: Oh. Oh, yes. Should

19 have been '14, right, because this is for 2013

20 fees.

21 JUDGE STRICKLER: I'm sorry. Are you

22 able to answer my question? I'm trying to find

94

1 out whether you understand that you signed these

2 in July of 2013 or July of 2014.

3 THE WITNESS: I think it should have

4 been '14.

5 JUDGE STRICKLER: So when you say it

6 should have been, it's your recollection then

7 that you did in fact sign them in 2014 --

8 THE WITNESS: Exactly.

9 JUDGE STRICKLER: -- and 2013 was just

10 an erroneous marking?

11 THE WITNESS: Correct. Yes.

12 JUDGE STRICKLER: Thank you.

13 BY MR. MacLEAN:

14 Q Now, within MPAA Exhibit 307, which

15 includes the termination notice that IPG received

16 from Feed the Children, was -- well, first of

17 all, I heard your counsel say that Feed the

18 Children is not claimed in this proceeding. Is

19 that an accurate statement?

20 MR. BOYDSTON: Your Honor, I think

21 it's vague as to "proceeding." Could we have a

22 little definition as to "proceeding?" And

95

1 there's a reason why it's unclear.

2 MR. MacLEAN: I was just quoting Mr.

3 Boydston, so I was --

4 JUDGE BARRETT: Well, this proceeding

5 I took you to mean the present proceeding, the

6 one in which we are holding hearings.

7 MR. BOYDSTON: Right. Exactly.

8 MR. MacLEAN: And I did, too.

9 BY MR. MacLEAN:

10 Q So is that correct, Ms. Vernon?

11 A Pardon me? Say again?

12 Q Is it correct that Feed the Children

13 is not claimed in this proceeding that we're

14 holding today?

15 A Well, it -- I thought it was claimed,

16 but it -- I thought it was claimed for just

17 particular years.

18 Q And are the years at issue in this

19 proceeding claimed on behalf of Feed the

20 Children?

21 A I'm not sure. Tell you the truth,

22 I've gotten so many of them so mixed up because

96

1 there are so many of them that I'm losing track.

2 Q In fact, IPG --

3 A Because I could tell you -- let me

4 just explain. You know, with regard to Feed the

5 Children, I used to deal with them, you know, and

6 then they had this whole shake-up of people. And

7 to tell you the truth, I really don't know that

8 much about them because Raul and Brian have been

9 dealing with -- with them exclusively, you know,

10 for the longest time. Certainly this summer.

11 Since they came here and testified before the

12 Judges.

13 Q In fact --

14 A I really haven't had that much contact

15 with them.

16 Q -- Feed the Children is claimed by IPG

17 in this proceeding here today.

18 MR. BOYDSTON: Your Honor,

19 argumentative. She said she does not know.

20 JUDGE BARRETT: Sustained.

21 BY MR. MacLEAN:

22 Q Have you ever filed a claim on behalf



97

1 of a claimant for with whom you have no written  
2 contract or correspondence in IPG's files?

3 A I don't believe so. I -- I mean, at  
4 -- you know, no contact? I -- I don't believe  
5 so.

6 Q Did you file a claim on behalf of IWV  
7 Media at a time when you had not written contract  
8 in IPG's files?

9 A No. Well, you said no written  
10 correspondence.

11 Q All right.

12 A I -- and we had had -- we -- we did  
13 have correspondence. You know, we just couldn't  
14 find the actual contract with IWV. But, yes, we  
15 -- we did have correspondence.

16 Q You had written correspondence with  
17 IWV Media at the time you filed IPG's claim on  
18 behalf of IWV Media?

19 A Which time? I'm -- I'm -- I'm not  
20 sure. Are you talking -- which time we filed?

21 Q I asked you if you've ever done that.

22 A For IWV?

99

1 So -- but she validated, yes, you know, made the  
2 filings.

3 BY MR. MacLEAN:

4 Q Did you file a claim on behalf of IWV  
5 Media at a time when you didn't have a written  
6 contract with IWV Media in your files?

7 A Yes, we've said that consistently.  
8 That's why a lot of the --

9 Q Have you filed --

10 A -- claims got dismissed last time.

11 Q Have you ever filed a claim on behalf  
12 of a claimant whose representation agreement with  
13 IPG has expired?

14 MR. BOYDSTON: Your Honor, I'll  
15 object. I think it calls for a legal conclusion,  
16 because even I had to think about what it meant  
17 to expire. Objection. Calls for a legal  
18 conclusion.

19 JUDGE BARRETT: Sustained, but she may  
20 answer. We won't take her testimony as that of a  
21 legal expert.

22 So if you can answer the question, you

98

1 MR. BOYDSTON: Your Honor, I'm

2 confused. I don't think he said ever. I think  
3 he first said since you filed. So I'm confused.

4 JUDGE BARRETT: Well, I think he did.  
5 Overruled.

6 THE WITNESS: Well, there's -- there's  
7 always been written correspondence with IWV. I  
8 mean, so I -- I guess I'm not understanding the  
9 question, you know, because -- because clearly,  
10 you know, it had -- you know, there had been  
11 filings in the past and everything. I didn't  
12 make every filing for IWV, you know? Marian  
13 Oshita had made them. Lisa Deloss had made them  
14 in the past, you know? So, you know, there was,  
15 you know, consistency, you know, that it had been  
16 filed year after year after year after year. You  
17 know, there had been contact and correspondence  
18 between them. You know, so there was a history,  
19 you know? And I said, you know, with -- with her  
20 yes, but we didn't have -- you know, when we came  
21 to the 2000, 2003 proceedings, we didn't have the  
22 contract, you know, and Maureen didn't either.

100

1 may answer the question.

2 THE WITNESS: Well, I guess I don't  
3 really know because I've got a question, too, as  
4 I'm not exactly what you mean by -- by "expired."  
5 Because all of the contracts are -- they're not  
6 all exactly the same. Some have -- you know,  
7 some have term limits that are, you know, like  
8 just for a year. Or, you know, some have, you  
9 know, language in there that -- you know, they're  
10 just for three years or some are just, you know,  
11 perpetual.

12 BY MR. MacLEAN:

13 Q All right.

14 A And --

15 Q Ms. Vernon, I'll clarify. Have you  
16 ever filed a claim on behalf of a claimant after  
17 the term of years that's set forth in the  
18 representation agreement?

19 A Well, I have not knowingly done that,  
20 you know, unless they had -- had given me, you  
21 know, permission or, you know, that indicated  
22 that, yes, they want to keep on going. So --

101

1 Q I mean, you said you're very careful  
2 not to do it, right?  
3 A I try to be.  
4 Q But has it ever happened that you've  
5 filed a contract after -- filed a claim after the  
6 term of years set forth in the contract is over?  
7 A I don't know.  
8 MR. BOYDSTON: Objection, Your Honor.  
9 He asked her before. She said not knowingly. I  
10 think it's been asked and answered.  
11 JUDGE BARRETT: Sustained.  
12 BY MR. MacLEAN:  
13 Q Did you file a claim on behalf of Bob  
14 Ross, Inc. after the term of years set forth in  
15 the representation agreements had expired?  
16 A It's hard for me to recall exactly  
17 what the situation is, but as I recall, we had  
18 been filing for him for quite a number of years.  
19 And then at some point he had said -- and we had  
20 been paying him and accounting to him for a  
21 number of years. And then at some point he had  
22 said, oh, well, I had terminated so many years

102

1 ago. And all of a sudden he just revealed that  
2 at some point. And I don't -- I don't know where  
3 it came from, but like I said, he didn't have a  
4 problem with it when we were paying him and  
5 accounting to him for -- for all of those years.  
6 But I can't remember all the -- all of the  
7 details or the circumstances to it. So --  
8 Q But --  
9 A -- like I said, so, you know, we -- we  
10 had been making claims for him, but, you know, if  
11 he had, you know, terminated, we had no idea of  
12 his termination. You know, we wouldn't have been  
13 making claim for him if we, you know, had  
14 realized he had terminated any time soon before  
15 that.  
16 Q So does this fall under the category  
17 of your answer not knowingly?  
18 A Well, I would say so, yes.  
19 Q If you could take a look at SDC  
20 Exhibit 602, which is in the SDC exhibit binder.  
21  
22 A I'm sorry. Could you say that number

103

1 again?  
2 Q Six-zero-two.  
3 A Okay. I'm there.  
4 Q And you'll see that this is a  
5 declaration of Walter Kowalski. And it has  
6 attachments to it. And if you'll turn to  
7 Attachment F of that declaration.  
8 A Okay.  
9 Q This is an email from you to Mr.  
10 Kowalski, is that right?  
11 A Yes.  
12 Q Did you write this email?  
13 A Yes.  
14 Q And you sent it to Mr. Kowalski?  
15 A Yes.  
16 Q On March 12th, 2013?  
17 A That's, yes, what the email says.  
18 MR. MacLEAN: Your Honor, I move  
19 admission of Attachment F to SDC Exhibit 602.  
20 MR. BOYDSTON: Your Honor, I object on  
21 the grounds of relevance. There's no evidence  
22 that any claim is being made in this proceeding

104

1 at this time on behalf of this entity, Bob Ross,  
2 Inc. The only thing that's ever even been made  
3 by IPG on behalf of that entity has been in the  
4 public broadcasting category, not this one. So  
5 this is -- it was just irrelevant.  
6 MR. MacLEAN: Your Honor, this is  
7 impeachment evidence. She said she did not  
8 knowingly file a claim on behalf of a claimant  
9 after learning of the expiration of a contract,  
10 and I intend to show that that's not a truthful  
11 statement.  
12 JUDGE BARRETT: Are you asking that  
13 the exhibit be admitted or only the attachment?  
14 MR. MacLEAN: At this time, Your  
15 Honor, I am only asking for Attachment F to SDC  
16 602.  
17 JUDGE BARRETT: Any objection? Mr.  
18 Olaniran, any --  
19 MR. OLANIRAN: No objection, Your  
20 Honor.  
21 JUDGE BARRETT: All right. At this  
22 point we will admit Attachment F. And the clerk

105

1 will make a note of that.  
 2 (Whereupon, the above-referred to  
 3 document was received into evidence as Attachment  
 4 F to SDC Exhibit No. 602.)  
 5 BY MR. MacLEAN:  
 6 Q Ms. Vernon, in Attachment F you are  
 7 responding to Bob Ross, Inc.'s contention that  
 8 IPG's representation agreements with Bob Ross,  
 9 Inc. had expired, is that right?  
 10 A I'm sorry. I was -- I was trying to  
 11 read it.  
 12 Q In Attachment F you are responding to  
 13 Bob Ross, Inc.'s contention that its  
 14 representation agreements with IPG had expired,  
 15 is that right?  
 16 A Yes.  
 17 Q And in fact IPG has no record of any  
 18 signed continuation of the representation  
 19 agreements with Bob Ross, Inc., is that right?  
 20 A Yes, that's correct.  
 21 Q You wrote this email in March of 2013,  
 22 is that right?

106

1 A Yes.  
 2 Q So by March of 2013 you were aware  
 3 that you were outside the term, that IPG was  
 4 outside the term of its representation agreements  
 5 with Bob Ross, Inc., is that right?  
 6 A Yes, I believe so.  
 7 Q There was never any continuation of  
 8 those agreements signed, is that right?  
 9 A I believe so.  
 10 Q And if you take a look at MPAA Exhibit  
 11 356, this is IPG's joint claim for cable  
 12 retransmission of royalty fees for the year 2013,  
 13 is that right?  
 14 A Yes.  
 15 Q Which you testified you signed and  
 16 filed in July of 2014, correct?  
 17 A Yes.  
 18 Q Which is after March of 2014, right?  
 19 A Right.  
 20 Q And if you take a look at line 23 of  
 21 Exhibit A to MPAA Exhibit 356, you'll see IPG  
 22 made a claim for Bob Ross, Inc., is that right?

107

1 A Yes.  
 2 Q After you knew that Bob Ross, Inc.'s  
 3 representation agreements with IPG had expired,  
 4 is that right?  
 5 A Well, I'd have to go back and look at  
 6 the -- the situation, but, yes, I -- I mean, I  
 7 don't know what years we made claim for. I mean,  
 8 it -- because it show it on this. You know, it's  
 9 just for during that period, but, you know, we --  
 10 we -- we could have been making claim for, you  
 11 know, 1999, you know? So --  
 12 Q Well, in MPAA Exhibit 356 IPG is  
 13 making claim for 2013, correct?  
 14 A Oh, that's right. You know, I was  
 15 looking at something else. Yes.  
 16 Q And if you take a look at MPAA Exhibit  
 17 357, which is IPG's joint claim for satellite  
 18 retransmission royalty fees in 2013, if you again  
 19 look at line 23 of Exhibit A to this exhibit,  
 20 you'll see that IPG made claim for Bob Ross, Inc.  
 21 for 2013 satellite retransmission royalty fees,  
 22 correct?

108

1 A Correct.  
 2 MR. MacLEAN: Your Honor, at this time  
 3 I would like to attempt to lay a foundation of  
 4 relevance for MPAA Exhibit 358.  
 5 JUDGE BARRETT: Go right ahead.  
 6 BY MR. MacLEAN:  
 7 Q You still have MPAA Exhibit 358 in  
 8 front of you, Ms. Vernon?  
 9 A Yes.  
 10 Q Now, I asked you before if this email  
 11 was sent to Jean McBride at Paramount Pictures.  
 12 A Yes.  
 13 Q And it was, correct?  
 14 A That's what the email says, yes.  
 15 Q The first line of this email says, "As  
 16 the designated representative of your company we  
 17 are contacting you to update you on the status of  
 18 proceedings before the U.S. Copyright Office for  
 19 the distribution of 2000 to 2003 cable  
 20 retransmission royalties," correct?  
 21 A Correct.  
 22 Q Is IPG the designated representative

109

1 of Paramount Pictures?

2 A It doesn't sound familiar to me, so I  
3 don't think so, but --

4 Q So Paramount Pictures --

5 A -- like I said, it's -- things get  
6 sent out in error sometimes. It's not unusual.

7 MR. MacLEAN: Your Honor, I move the  
8 admission of MPAA Exhibit 358.

9 MR. BOYDSTON: Your Honor, objection  
10 on the same grounds as before.

11 MR. MacLEAN: Should I make a proffer  
12 as to relevance?

13 MR. BOYDSTON: Yes, if you would,  
14 please.

15 MR. MacLEAN: Your Honor, the  
16 relevance of this is IPG has its list of  
17 claimants, its list of contact information, its  
18 listed email addresses. It's the same list year  
19 after year after year. They don't update it.  
20 They don't strike claimants whose contracts  
21 expired. They don't strike claimants who have  
22 terminated them. They just keep on filing the

110

1 claims year after year after year until they are  
2 challenged on them, and sometimes even continue  
3 filing them after that. Their email --

4 MR. BOYDSTON: Your Honor, this is  
5 testimony. He's saying things that aren't in  
6 evidence.

7 MR. MacLEAN: This --

8 JUDGE BARRETT: That's right.

9 MR. MacLEAN: This piece of evidence  
10 shows, MPAA 358 shows that IPG is sending out its  
11 emails to its alleged claimants, including people  
12 -- no connection whatsoever with IPG and then  
13 getting correspondence back showing that the  
14 correspondence that IPG sends out and receives  
15 back from these claimants means nothing. It does  
16 not imply in the least that there is a contract  
17 principle agency relationship between IPG and the  
18 claimants, the alleged claimants that it's  
19 sending these emails to that rebuts Ms. Vernon's  
20 testimony. It also goes directly to the points  
21 that both SDC and MPAA are making relating to  
22 IPG's -- the sufficiency of the evidence of IPG's

111

1 authority to represent the claimants it's  
2 claiming.

3 MR. BOYDSTON: Your Honor, I don't  
4 think that answers the objection, the original  
5 objection, but moreover Mr. MacLean's statements  
6 are full of facts not in evidence. Paramount,  
7 this Jean McBride from Paramount is a successor  
8 in interest to a number of different entities  
9 including those which were IPG claimants. So him  
10 saying there's no connection, there's no evidence  
11 in support of that. And if we want to get into a  
12 full evidentiary hearing on that, it can be  
13 established that, yes, there is.

14 So back to the original objection, the  
15 original objection I think still stands and I  
16 made in response to Mr. Olaniran's attempt to  
17 admit it. I renew that objection now.

18 MR. MacLEAN: Your Honor, if IPG has  
19 an explanation for this, they can make it, but it  
20 is relevant. It goes to show the points that I'm  
21 making here.

22 JUDGE BARRETT: I need to confer with

112

1 my colleagues.

2 (Whereupon, the above-entitled matter  
3 went off the record at 11:27 a.m. and resumed at  
4 11:30 a.m.)

5 JUDGE BARRETT: Please be seated.

6 Exhibit 358 is now admitted for  
7 impeachment purposes only subject to  
8 cross-examination or rehabilitation of the  
9 witness, as would be the case in any proceeding.  
10 (Whereupon, the above-referred to  
11 document was received into evidence as MPAA 358  
12 Exhibit No. 358.)

13 JUDGE BARRETT: We want the record to  
14 be clear that Mr. MacLean's proffer regarding  
15 IPG's business practices is not part of this  
16 document, and this document does not establish  
17 that proffer. It's simply offered for the  
18 impeachment based upon the first line of the  
19 exhibit.

20 Now to follow up, Ms. Vernon, I think  
21 this has been asked and I'm not sure that any of  
22 the Judges are clear on the answer, so let me

113

1 just ask straightforwardly when IPG receives a  
2 notice of termination of relationship with a  
3 client with whom IPG has had an ongoing  
4 relationship, what is the business process at IPG  
5 with regard to your internal database, your  
6 accounting database, your email LISTSERV? Across  
7 the board what is the IPG business practice when  
8 you receive a notice of termination?

9 THE WITNESS: I've got to say we don't  
10 have anything set in stone, you know, and that  
11 may just be poor organizational problems, but,  
12 too, because it just depends on who -- on the --  
13 on the client and when the termination is, you  
14 know? If -- if the -- I mean, because if -- if  
15 the termination is, okay, we're terminating now,  
16 but due to the contract and the terms that means  
17 that we still are in the term to where we have to  
18 file the claim for that year then even though  
19 they have terminated. So we wouldn't file for  
20 them the next year, we would still want to keep  
21 them, you know, on our list so they would receive  
22 all of the information that all of our -- all of

114

1 the other clients got. So --

2 JUDGE FEDER: Who makes that call as  
3 to when you stop filing on behalf of a particular  
4 client?

5 THE WITNESS: That would normally be  
6 Raul. And sometimes would discuss it with Brian  
7 because the first thing we would do is -- is look  
8 at the -- the individual contract to see what the  
9 terms are for each individual client.

10 JUDGE FEDER: So Raul perhaps in  
11 consultation with counsel makes a determination.  
12 What process do you have internally for ensuring  
13 that that determination, whatever it is, is  
14 carried out? In other words, that in year one  
15 you receive a termination. You make a  
16 determination internally that you still need to  
17 file for that year. Whether or not that's  
18 correctly termination. I'm not expressing an  
19 opinion.

20 THE WITNESS: Yes.

21 JUDGE FEDER: But not for the  
22 following year. How do you ensure that the

115

1 following year you do not file for that claimant?

2 THE WITNESS: Tell the truth, I -- I  
3 can't tell you one specific thing. You know, it  
4 would be notes or, you know, things that we would  
5 put up, you know, as notes to ourselves and our  
6 emails basically that would go into that  
7 particular claimant's file, you know, of  
8 everything with them. I can't tell you one  
9 particular thing. There -- there is not one  
10 particular set of this, this, this and this.

11 JUDGE FEDER: When you prepare the  
12 exhibit sheet that is attached to your claims, do  
13 you review all of the files of all of the  
14 whatever, 100 or 200 -- I guess we're looking at  
15 about a little over 200 claimant's. Do you  
16 review all of those files before preparing that  
17 attachment and putting it on that claim form?

18 THE WITNESS: Should, but, you know,  
19 I don't. And I'm not sure how detailed Raul goes  
20 into -- into it as well.

21 JUDGE FEDER: Who prepares that  
22 attachment?

116

1 THE WITNESS: Raul does, yes. But  
2 it's one, you know, that I see all the time  
3 because it's, you know, the list of people I  
4 start calling. So I'm familiar with them.

5 BY MR. MacLEAN:

6 Q Just to make sure the record is clear,  
7 when you say "Raul," you're referring to Raul  
8 Galaz?

9 A Oh, I'm sorry. Raul Galaz, yes.

10 Q And similarly when you say "Brian,"  
11 you're referring to --

12 A Brian Boydston.

13 Q -- IPG counsel Brian Boydston?

14 A Correct.

15 Q Okay.

16 A Yes.

17 Q Before we leave MPAA Exhibit 358, I  
18 need to ask this: I heard your counsel say that  
19 Paramount Pictures is the successor in interest  
20 to authorize claimants of IPG. Do you have any  
21 knowledge of that?

22 A No, that -- that may be the case. I

117

1 -- but I'm not familiar with it.

2 Q Have you ever filed with the Copyright

3 Royalty Board a notice that Paramount Pictures is

4 the successor in interest to any IPG claimant?

5 A I don't recall if I -- if I have.

6 Q Are you aware of the Copyright Royalty

7 Board rule that requires claimants in the event

8 of a legal name and/or address change to notify

9 the Copyright Royalty Board of the change?

10 A No, I am not.

11 MR. MacLEAN: Your Honor, I would ask

12 that the Board take judicial notice of 37 CFR

13 Section 360.3(c), this Board's rule, "In the

14 event that the legal name and/or address of the

15 copyright owner entitled to royalties or the

16 person or entity filing the claim changes after

17 the filing of the claim, the Copyright Royalty

18 Board shall be notified of the change."

19 MR. BOYDSTON: No objection.

20 MS. PLOVNICK: No objection.

21 JUDGE BARRETT: Mr. MacLean, we can

22 take official notice, but -- and think you for

118

1 the promotion, but we can't take judicial notice.

2 (Laughter)

3 MR. MacLEAN: I understand, Your

4 Honor. In that case I ask that you take official

5 notice.

6 JUDGE BARRETT: Will do. Or maybe

7 it's not a promotion. I'm not sure.

8 (Laughter)

9 BY MR. MacLEAN:

10 Q Ms. Vernon, in addition to being the

11 99 percent owner of IPG, you are also Raul Galaz'

12 sister, is that right?

13 A That's correct.

14 MR. MacLEAN: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. BOYDSTON:

17 Q Sorry. I forgot my glasses, but I

18 think I can ask the first question.

19 Ms. Vernon, you were asked about the

20 veracity of IPG's agreements and your knowledge

21 -- actually strike that. You were asked about

22 whether or not emails ever went out to non-IPG

119

1 claimants, correct?

2 A Correct.

3 Q When IPG sends out an email to its

4 claimants is it intended only to send them to its

5 claimants?

6 A That's the intention.

7 Q Does IPG ever intentionally send

8 emails to non-claimants?

9 A Yes.

10 Q And what circumstances does IPG

11 intentionally send an email to a non-claimant?

12 A Intentionally send one to a

13 non-claimant?

14 Q Right. My initial question was does

15 IPG ever intentionally send an email to a

16 non-claimant?

17 A Not intentionally.

18 Q Thank you. Now with regard to Bob

19 Ross, Inc., I believe that you said that you

20 recalled that IPG had made claims on behalf of

21 Bob Ross, Inc. for a number of years. And I

22 think you said had paid money to Bob Ross, Inc.

120

1 pursuant thereto. Is that true?

2 A Yes.

3 Q And that until 2013 Bob Ross, Inc.

4 never raised any issue about the legitimacy of

5 IPG's conduct in that regard. Is that the case?

6 MR. MacLEAN: Objection. Leading.

7 MR. BOYDSTON: I'll re-ask the

8 question.

9 BY MR. BOYDSTON:

10 Q Prior to 2013 were you aware of Bob

11 Ross at any time objecting to IPG collecting

12 money and passing it on to Bob Ross?

13 A No.

14 Q Now you saw the attachment to the

15 notice about termination which was a piece of

16 correspondence from Bob Ross, Inc. Actually it

17 was IPG back to Bob Ross, Inc., I think,

18 discussing Bob Ross, Inc.'s -- whatever it was.

19 Bob Ross, Inc. saying you shouldn't represent us

20 anymore.

21 JUDGE BARRETT: Excuse me. Let's be

22 precise.

121

1 MR. BOYDSTON: Thank you.  
2 JUDGE BARRETT: It's SDC Exhibit 602,  
3 Attachment F.

4 MR. BOYDSTON: Thank you, Your Honor.  
5 Your Honor, I'd like to mark what would be next  
6 in line for IPG, which is 127. I'll pass them  
7 out here.

8 JUDGE BARRETT: Actually 126 is next.

9 MR. BOYDSTON: Oh, you're right. I  
10 have 126 I'm anticipating, but that would make  
11 this 126. You're right.

12 JUDGE BARRETT: Okay.

13 (Whereupon, the above-referred to  
14 document was marked as IPG Exhibit No. 126 for  
15 identification.)

16 BY MR. BOYDSTON:

17 Q First of all, this is a letter from my  
18 office dated July 10th, 2014. Is that what you  
19 see there?

20 A Yes.

21 Q And on the second page there is a CC  
22 to Independent Producers Group. You see that?

123

1 MR. BOYDSTON: And, Your Honor, I'd  
2 like to move that Exhibit 126 be admitted.

3 MR. OLANIRAN: Objection, Your Honor.  
4 This letter is dated July 10th, 2014. They had  
5 plenty of opportunity to produce it in discovery  
6 and they never did.

7 MR. MacLEAN: It's the first time I've  
8 seen this letter, Your Honor.

9 MR. BOYDSTON: Your Honor, this letter  
10 is not responsive to any discovery. Moreover,  
11 this is being brought in response to impeachment  
12 evidence that was just brought up now and just  
13 delivered to -- and just made part of their  
14 impeachment attempt. It's merely an attempt to  
15 rehabilitate and/or answer impeachment.

16 JUDGE BARRETT: The objection is  
17 overruled.

18 MR. BOYDSTON: Thank you, Your Honor.

19 JUDGE BARRETT: I'm sorry. So the  
20 record is clear, 126 is admitted.

21 (Whereupon, the above-referred to  
22 document was received into evidence as IPG

122

1 A Yes.

2 Q Do you recall seeing this letter?

3 JUDGE BARRETT: Who is the addressee?

4 MR. BOYDSTON: I'm sorry. The  
5 addressee is Mary Rasenberger, Esquire of Cowan,  
6 DeRaets, Abrahams & Sheppard in New York City, a  
7 law firm.

8 JUDGE BARRETT: Thank you.

9 BY MR. BOYDSTON:

10 Q Actually before you answer that, let  
11 me ask you to just take a minute to read the  
12 letter first.

13 A Okay. I've read it again.

14 Q Before I ask you about the letter, do  
15 you recall the circumstances the letter  
16 discusses?

17 A Yes, it's as we were discussing  
18 earlier the Feed the Children email termination  
19 that they sent.

20 Q And do you recall seeing this letter  
21 when you got a copy of it?

22 A Yes.

124

1 Exhibit No. 126.)

2 BY MR. BOYDSTON:

3 Q IPG filed 2013 claims in July of 2014,  
4 correct?

5 A Correct.

6 Q And I know the date that is on it; we  
7 just looked at that exhibit a minute ago, it was  
8 misdated 2013, but that was in July of 2014,  
9 correct?

10 A That's correct.

11 Q And are you aware as to whether or not  
12 counsel for anyone else for Feed the Children had  
13 responded to this letter at the time that IPG  
14 filed these July claims?

15 A I don't believe so. Yes --

16 Q Thank you.

17 A Yes, after we sent this letter, then  
18 I don't -- it -- yes. No.

19 Q You were asked about the processes  
20 that IPG takes once termination happens, and  
21 Judge Feder asked you specifically once a  
22 determination has been made as to the term

125

1 internally by IPG, what does IPG do?  
 2 With regard to IPG's claimants --  
 3 which I think are in excess of 200, is that  
 4 correct?  
 5 A That's correct.  
 6 Q Out of that number of claimants are  
 7 terminations common or are they not common?  
 8 A Not common.  
 9 MR. BOYDSTON: Thank you, Your Honor.  
 10 I have nothing further.  
 11 JUDGE BARRETT: Ms. Vernon, I have  
 12 some questions for you.  
 13 THE WITNESS: Okay.  
 14 JUDGE BARRETT: Are you right-handed  
 15 or left-handed?  
 16 THE WITNESS: I'm right handed.  
 17 JUDGE BARRETT: Okay. And is Mr.  
 18 Galaz right-handed or left-handed?  
 19 THE WITNESS: He's right-handed.  
 20 JUDGE BARRETT: Okay. Do you have a  
 21 rubber stamp with your signature on it that you  
 22 use for massive communication?

126

1 THE WITNESS: No, I don't.  
 2 JUDGE BARRETT: Okay. Any follow-up  
 3 questions on the basis of those questions?  
 4 (No audible response)  
 5 JUDGE BARRETT: I actually want to ask  
 6 again another question with regard to Exhibits  
 7 356 and 357.  
 8 THE WITNESS: Okay.  
 9 JUDGE BARRETT: Those are the claims  
 10 for cable and satellite  
 11 retransmission --  
 12 THE WITNESS: Right.  
 13 JUDGE BARRETT: -- royalty fees for  
 14 2013.  
 15 THE WITNESS: Right.  
 16 JUDGE BARRETT: Do you have a specific  
 17 recollection of having signed those forms?  
 18 THE WITNESS: Yes. Yes, I do.  
 19 JUDGE BARRETT: Okay.  
 20 THE WITNESS: Yes, because I sign them  
 21 every year.  
 22 JUDGE BARRETT: Do you recall whether

127

1 you filled in the date or whether it was already  
 2 there when you signed it?  
 3 THE WITNESS: That I can't remember.  
 4 JUDGE BARRETT: Okay. All right.  
 5 Thank you.  
 6 THE WITNESS: Yes.  
 7 JUDGE BARRETT: Any additional  
 8 questions?  
 9 MR. OLANIRAN: No further questions  
 10 FOR US, Your Honor.  
 11 MR. MacLEAN: I do have a single  
 12 question based on yours, Your Honor.  
 13 RECROSS-EXAMINATION  
 14 BY MR. MacLEAN:  
 15 Q To your knowledge does Mr. Galaz have  
 16 a rubber stamp with your signature on it?  
 17 A Not to my knowledge.  
 18 MR. MacLEAN: No further questions.  
 19 JUDGE BARRETT: Mr. Boydston?  
 20 MR. BOYDSTON: No, nothing further.  
 21 IPG rests its defense of the rebuttal by MPAA.  
 22 JUDGE BARRETT: Okay.

128

1 MR. BOYDSTON: It would now be --  
 2 (Simultaneous speaking.)  
 3 MR. BOYDSTON: -- IPG's rebuttal of  
 4 the MPAA, which should last 10 minutes. And if  
 5 you'd like to start, we can do so.  
 6 JUDGE BARRETT: Correct. So you've  
 7 completed your cross of IPG with regard to its  
 8 rebuttal of the MPAA claims?  
 9 MR. OLANIRAN: Correct.  
 10 JUDGE BARRETT: Okay.  
 11 MR. OLANIRAN: And Mr. Galaz I think  
 12 will probably come back up and I'd have to do  
 13 additional cross.  
 14 JUDGE BARRETT: Okay. Understood.  
 15 Mr. Boydston, you may call your first  
 16 witness with regard to IPG's challenges to MPAA  
 17 claims.  
 18 MR. BOYDSTON: And may Ms. Vernon  
 19 stand down?  
 20 JUDGE BARRETT: She may. You can just  
 21 leave all of this.  
 22 THE WITNESS: Just this? Okay.



129

1 (Whereupon, the witness was excused.)  
 2 MR. BOYDSTON: Your Honor, IPG calls  
 3 Raul Galaz.  
 4 JUDGE BARRETT: You remain under oath.  
 5 Thank you, Mr. Galaz. You may be seated.  
 6 MR. MacLEAN: Your Honor, we have our  
 7 witnesses planning on this afternoon, however, I  
 8 beginning to get the sense we might not get there  
 9 and I'm wondering if I could get a time estimate  
 10 from Mr. Boydston and Mr. Olaniran so that I can  
 11 make a determination as to whether to tell them  
 12 they can hold off until tomorrow.  
 13 JUDGE BARRETT: Oh, I'm sorry. I  
 14 perhaps misunderstood your representations at the  
 15 commencement of the hearing that all parties have  
 16 agreed that your witnesses would come on  
 17 Wednesday afternoon.  
 18 MR. MacLEAN: So, okay. Let me just  
 19 clear up any confusion about that. We did have  
 20 two witnesses that were both going to be very,  
 21 very short that were going to come at the  
 22 conclusion of lunch today. And that's what I

130

1 told you at the beginning.  
 2 Since that time Mr. Boydston has  
 3 graciously agreed to stipulate to the  
 4 authenticity of the two exhibits that we were  
 5 going to put on through those two witnesses.  
 6 Therefore, they will not be here. However, we  
 7 have other witnesses whom we intend to present  
 8 that I've told to come this afternoon, but I'm  
 9 sure would appreciate being told to come tomorrow  
 10 if I can safely do that. And so I'm asking if we  
 11 can get a time estimate sufficient that I can  
 12 rely upon to tell the witnesses to wait until  
 13 tomorrow.  
 14 JUDGE BARRETT: Thank you for clearing  
 15 that up.  
 16 MR. Boydston, what is your anticipated  
 17 direct examination time for this portion of your  
 18 case for Mr. Galaz?  
 19 MR. BOYDSTON: Your Honor, just give  
 20 me two seconds. I'm in the midst of reorganizing  
 21 for the next phase here, but --  
 22 (Off mic comment.)

131

1 JUDGE BARRETT: You may have all the  
 2 time you need, Mr. Boydston.  
 3 MR. BOYDSTON: I appreciate that, Your  
 4 Honor. I think that we probably have an hour or  
 5 so of direct cross-examination of Mr. Galaz,  
 6 depending upon the intensity of objections. But  
 7 I think an hour, even with the usual roar of  
 8 objections, is probably pretty close.  
 9 JUDGE BARRETT: And Mr. Olaniran, do  
 10 you have an estimate of the cross-examination of  
 11 Mr. Galaz in this phase of the proceeding?  
 12 MR. OLANIRAN: I had estimated about  
 13 an hour at the beginning when we were planning  
 14 this, and I'm sure Your Honor understood that I'm  
 15 not sure that these things go according to plan.  
 16 Actually, I had every intention of asking for  
 17 some extra time, given the somewhat lengthy,  
 18 unusually lengthy cross-examination that I had  
 19 with Mr. Galaz yesterday. So I'll try for an  
 20 hour. I'm hoping that we can stick to hour or  
 21 so.  
 22 JUDGE BARRETT: So given that the

132

1 afternoon session is two hours and 15 minutes,  
 2 Mr. MacLean, I think you're safe in letting your  
 3 witnesses know they should come to nine o'clock  
 4 tomorrow, and if we have to squander 15 minutes  
 5 of hearing time this afternoon, we'll do so.  
 6 MR. MACLEAN: I appreciate that, Your  
 7 Honor.  
 8 JUDGE BARRETT: Mr. Boydston?  
 9 DIRECT EXAMINATION  
 10 BY MR. BOYDSTON:  
 11 Q Thank you, Your Honor. Mr. Galaz,  
 12 have you reviewed the electronic files produced  
 13 by the MPA in this matter?  
 14 A Yes, I have.  
 15 Q And let me ask you to take a look at  
 16 what's been marked as IPG Exhibit 1, or excuse  
 17 me, 12. Tell me if you recognize that document?  
 18 A Yes, I do.  
 19 Q And is that a document you created?  
 20 A Yes, it is.  
 21 Q And what does it purport to represent?  
 22 A It purports to represent a list of

133

1 MPAA claim copyright owners, for which we have  
2 received no substantiation of representation in  
3 one or more years, because they were an  
4 underlying -- purported to be an underlying  
5 copyright owner represented by an agent, and  
6 also to clarify, it was derived from the Excel  
7 spreadsheet that was provided by the MPAA  
8 pursuant to the Judge's order of July 30th, which  
9 required the MPAA to produce a document that  
10 couples a particular program claim with a  
11 particular claimant.

12 In these circumstances, the Excel  
13 spreadsheet that we received would indicate  
14 whether or not the particular claimant in a  
15 project for the program was represented by an  
16 agent or not.

17 Q So let's look at the first name in  
18 this. Number one is the designation. It says  
19 "First Miracle Productions, Inc.," and then in  
20 parentheses "Compact."

21 JUDGE BARRETT: Before we get into the  
22 contents, are you going to offer this one too?

134

1 MR. BOYDSTON: Yeah, I would think --  
2 excuse me. Yes, Your Honor I am. I just thought  
3 I'd probably need a little more examination  
4 first, and I'll make the offer right now. We'd  
5 like to move this into evidence.

6 MS. PLOVNICK: And for the record, I  
7 think this is what he was going to testify to.  
8 But this is something that I think he created  
9 derived from a record that MPAA produced. So  
10 this specific document was not produced by MPAA,  
11 but was created by Mr. Galaz.

12 JUDGE BARRETT: I think the testimony  
13 identified it as that.

14 MS. PLOVNICK: As long as that is  
15 clear, we have no objection.

16 JUDGE BARRETT: Thank you. Mr.  
17 MacLean?

18 MR. MACLEAN: No objection.

19 JUDGE BARRETT: 112 is admitted.

20 MR. BOYDSTON: Thank you, Your Honor.

21 JUDGE BARRETT: I'm sorry, 12 is  
22 admitted.

135

1 (Whereupon, the above-referred to  
2 document was received into evidence as IPG  
3 Exhibit No. 12.)

4 BY MR. BOYDSTON:

5 Q So Mr. Galaz, looking at the first  
6 item there, it says -- when I said -- oh no. I  
7 beg your pardon. I've got a bad pen. It was  
8 "First Miracle Productions," and then Compact in  
9 parenthetical. Given the explanation you just  
10 gave us, please explain first Miracle, where you  
11 came up with the title or the entity First  
12 Miracle Productions, Inc.?

13 A Well, as I indicated, there was an  
14 Excel spreadsheet that was produced by the Motion  
15 Picture Association of America, pursuant to the  
16 Judge's July 30th order. That spreadsheet  
17 indicated which program claims were being made  
18 for particular -- tied to particular copyright  
19 owners.

20 Within that spreadsheet, it indicated  
21 whether or not -- it actually did it differently,  
22 depending upon the year. In some cases, it would

136

1 have an additional column to indicate if the  
2 claim was being made vis-a-vis an agent.

3 In other instances, such as -- and you  
4 see the example here, First Miracle Productions,  
5 it would indicate in the same column, next to the  
6 purported copyright owner, who the agent was.

7 So for instance, in First Miracle  
8 Productions here, it would indicate that we have  
9 a circumstance in which First Miracle Productions  
10 was being claimed on behalf of the MPAA vis-a-vis  
11 the MPAA's agreement with Compact Collections,  
12 not vis-a-vis any agreement between the MPAA and  
13 First Miracle Productions for one or more years.

14 Q And is it your understanding that the  
15 MPAA does have an agreement with Compact for --

16 A I'm not sure if they have it for all  
17 years, but yes, I know that they have it, an  
18 agreement with Compact. I mean I don't know  
19 whether or not made claim in each of those years.  
20 I presume that they did, I'm not certain. But I  
21 know that in any event, the MPAA does have an  
22 agreement with Compact.

137

1 Q And based upon the database that you  
2 referred to that the MPAA provided, that database  
3 allowed you to connect Compact with First Miracle  
4 Productions; correct?

5 A That is correct.

6 Q And that you were also able to  
7 determine that First Miracle Productions is the  
8 actual owner of a copyright -- of copyright  
9 rights, if you will?

10 A To programs that are being claimed by  
11 the MPAA in these proceedings, that's correct.

12 Q So it would appear -- is it your  
13 understanding that Compact doesn't own the rights  
14 to First Miracle Productions; rather, Compact is  
15 an agent of First Miracle Productions, and it's  
16 First Miracle Productions that owns the rights?

17 A To the programs that are associated  
18 with the claims being made by the Motion Picture  
19 Association of America.

20 Q Okay. Now you said that this was a  
21 list of the claims, excuse me -- this is a list  
22 of MPAA-represented claimants making program

138

1 claims in this proceeding, for which there is no  
2 contract directly with the owner of the  
3 copyright, in this case First Miracle  
4 Productions, Inc.?

5 A Correct, and there's one thing I need  
6 to clarify about the list, because it was very  
7 confusing. When we received the Excel  
8 spreadsheet, it was very simple to dilute it down  
9 just to determine a number of you might say  
10 unique names that were being presented, and I  
11 think when I did that, it came out to somewhere  
12 around 1,500 or something.

13 But when you went through it, you  
14 would see that names would come up differently,  
15 and I'll use Compact as an example. I think it  
16 said "Compact Collections, Limited," "Compact  
17 Collections Limited," "Compact Collections Ltd.,"  
18 "Compact Collections Ltd.," with nothing else.

19 Each of those in those for instances  
20 would come out as a different entity. So when  
21 you actually took the 1,500 unique copyright  
22 owners that were identified and distilled it down

139

1 for that, it came up with a list of I think of  
2 600, roughly 650. I think I identify it in our  
3 moving papers, roughly 650 unique copyright  
4 claimants on whose behalf there were program  
5 claims being made by the MPAA.

6 This is just a subset of that, of  
7 those 650, the number that are being claimed  
8 vis-a-vis agents. So it's a distinction between  
9 the 582 and the 650, that that number that  
10 identifies parties that are not being claimed  
11 through agents in any year. These are the  
12 underlying copyright owners who are being claimed  
13 by agents for one or more years.

14 JUDGE STRICKLER: If I might interrupt  
15 for just a minute. May I Judge?

16 JUDGE BARRETT: You may.

17 JUDGE STRICKLER: In the very first  
18 line of IPG P-016, in parentheses you have  
19 "Parent/Agent." I understand your testimony  
20 about agent, what you mean by agent. But what  
21 did you mean by parent?

22 THE WITNESS: That was actually, I

140

1 think actually taken from the MPAA Excel  
2 spreadsheet. I didn't put that in. So I think  
3 it was -- I had taken to indicate that that's the  
4 underlying copyright owner.

5 JUDGE STRICKLER: I don't need you to  
6 speculate.

7 (Simultaneous speaking.)

8 THE WITNESS: We think that the --  
9 says owner. That's how I took it.

10 JUDGE STRICKLER: So you just took it  
11 from the Excel spreadsheet. You don't have any  
12 independent knowledge --

13 THE WITNESS: Correct.

14 JUDGE BARRETT: And your question was  
15 addressed to Exhibit 12, is that right? I think  
16 you said 16.

17 JUDGE STRICKLER: Oh, I'm sorry. I  
18 meant 12.

19 JUDGE BARRETT: Okay, thank you.  
20 We're going to break at this time. We will  
21 reconvene at 1:00. Mr. MacLean, if your status  
22 conference runs long, just send up smoke signals.

141

1 We'll attend your return.

2 MR. MACLEAN: Thank you, Your Honor.

3 (Whereupon, the above-entitled matter  
4 went off the record at 12:02 p.m. until 1:15  
5 p.m.)

6 JUDGE BARRETT: Please be seated. Our  
7 Attorney Advisor pointed out to me that I did a  
8 cut and paste on the length of time we have on  
9 our afternoon session, based on 16 years of  
10 experience from the afternoon session, it was two  
11 hours and 15 minutes, as I pointed out.

12 But actually our afternoon session is  
13 longer, because we start a half hour earlier and  
14 go a half hour longer than we used to do back in  
15 the day, as they say. So Mr. MacLean, did you  
16 call off your witnesses this afternoon?

17 MR. MACLEAN: I did Your Honor, and I  
18 should say a large portion of our exhibits are  
19 being offered without a sponsoring witness, or if  
20 there is a sponsoring witness, that sponsoring  
21 witness may be me.

22 So I do think that we will have

143

1 Whereupon,

2 RAUL GALAZ

3 was recalled as a witness and, after having been  
4 previously duly sworn, was examined and further  
5 testified as follows:

6 DIRECT EXAMINATION (resumed)

7 BY MR. BOYDSTON:

8 Q Thank you, Your Honor. Mr. Galaz,  
9 before we broke for lunch, we had been looking at  
10 Exhibit 12.

11 It had been admitted, and you were  
12 explaining that you had gone through MPAA  
13 information that was produced, and from that you  
14 came up with approximately 650 different  
15 MPAA-represented claimants who owned programs, or  
16 who owned -- who owned programs.

17 Then of those, 582 were in fact  
18 represented by agents who contracted with the  
19 MPAA. Do you recall that?

20 A That's correct.

21 Q So the balance of the MPAA-represented  
22 claimants who are not represented by agents, have

142

1 sufficient business at the beginning of our case,  
2 to at least make use of some of that time.

3 JUDGE BARRETT: Okay. I note that  
4 none of you squander time.

5 MS. PLOVNICK: Also just pursuant to  
6 our agreed order, MPAA has a rebuttal period  
7 after IPG. So that would need to come before SDC  
8 also. So I think we definitely probably --

9 JUDGE BARRETT: I think we'll be okay.  
10 I'm not at all concerned.

11 MR. BOYDSTON: And Your Honor, after  
12 lunch we discussed we're going to try and finish  
13 up this aspect today hopefully, so we can begin  
14 promptly with the SDC tomorrow, if not today. If  
15 so, Mr. MacLean and I are -- hopefully we could  
16 finish tomorrow and that was our goal.

17 JUDGE BARRETT: So I'm not at all  
18 concerned. Of course, it totally disregards  
19 what's happening across the street.

20 MR. BOYDSTON: Yes, I understand.

21 JUDGE BARRETT: So Mr. Boydston, you  
22 may continue.

144

1 you seen evidence of their ownership of the  
2 copyrighted material being claimed?

3 A The difference between 582 and the  
4 larger number, yes I have. Well, I've seen  
5 evidence of their ownership. In some  
6 circumstances, yes; in some circumstances, no.  
7 That brings in circumstances where a party is  
8 making claim as an owner, and not necessarily as  
9 an agent of an underlying owner.

10 I have seen evidence, I disagree with  
11 some of it, because that brings up circumstances  
12 in which just from eyeballing or personal  
13 knowledge, I may know that that particular entity  
14 is not the owner. But yes, I've seen at least  
15 entities purporting to be the owner of programs.

16 Q Okay. Focusing back on the 582, in  
17 which for those 582, just to confirm, there's  
18 nothing in the record that you've been provided  
19 or seen of those 582, whereby those 582 identify  
20 a contractual agreement with an agent, such as  
21 Screenwriters or EGEDA, that in turn has an  
22 agreement with the MPAA; is that correct?

145

1 A In those circumstances in which  
2 they're being represented by an agent, you want  
3 me to explain this, then that's correct. I  
4 haven't seen the agreement, if there is one  
5 between the agent and the underlying copyright  
6 owner.

7 When I say the underlying copyright  
8 owner, the underlying copyright owner as  
9 identified by the MPAA. So and I want to be  
10 clear that the interpretation of what I prepared  
11 and what's number 12, this is for one or more  
12 years.

13 So as an example, I would take the  
14 first one. First Miracle Productions Compact.  
15 What I can demonstrate is that in one or more  
16 years, First Miracle Productions is being claimed  
17 vis-a-vis Compact, and dependent upon the  
18 agreement between the MPAA and Compact.

19 That doesn't mean that in some of  
20 those years, First Miracle Productions has  
21 contracted directly with the MPAA. It's usually  
22 not the case, but there are some instances in

146

1 which that is the case.

2 Q Okay. Staying on that same subject --

3 A And we're not challenging those for  
4 purposes of this argument.

5 Q Understood. Well, explain to us under  
6 what circumstances IPG is challenging the rights  
7 of First Miracle Productions, Inc. in these  
8 proceedings?

9 A It would be those claims that are  
10 serving those particular years, where it's  
11 derived vis-a-vis the agreement with Compact.  
12 The obvious focus is, you know, untimeliness. We  
13 have literally nothing, not one piece of  
14 correspondence, not an agreement, not anything  
15 between Compact and First Miracle Productions.

16 We have not an agreement or any  
17 correspondence, not one shred of evidence between  
18 First Miracle Productions and the MPAA. So  
19 whatever claims are being attributed by the MPAA  
20 to First Miracle Productions, is all based on  
21 representations that are being made by Compact,  
22 without our ability to scrutinize any actual

147

1 representation of First Miracle Productions.

2 Q Now I presume that IPG accepts that  
3 Compact, the agent, has in fact manifested an  
4 intent for the MPAA to represent it and its  
5 signees in these proceedings?

6 A Correct.

7 Q But what you're saying is we don't  
8 have that same thing between who? Between who?

9 A Between the agent, in this instance,  
10 it would be Compact, and the entity that the  
11 MPAA, Compact, everybody acknowledges as the  
12 actual owner of the particular programs that are  
13 being claimed by, in this case, First Miracle  
14 Productions.

15 Q Now in addition to not having any  
16 evidence that First Miracle Productions has -- or  
17 excuse me, that Compact represents First Miracle  
18 Productions, is there any evidence that First  
19 Miracle Productions has affirmed ownership of  
20 certain programs to Compact?

21 A No, none.

22 Q Is there any evidence that First

148

1 Miracle Productions has any knowledge that it is  
2 the MPAA, as opposed to Compact, that's pursuing  
3 these claims?

4 A Well, you said as opposed to MPAA,  
5 excuse me, as opposed to Compact. There's  
6 literally nothing authored by -- in this instance  
7 it would be for those particular years, there  
8 would be absolutely nothing authored by First  
9 Miracle Productions, attesting to either a  
10 contractual relationship with Compact, and  
11 awareness or contractual relationship with MPAA,  
12 identification of any of its programming,  
13 literally nothing tying to this proceeding.

14 Q And is there any evidence in the  
15 record that First Miracle Productions, excuse me,  
16 strike that.

17 Is there any evidence in the record  
18 that Compact, in which Compact identifies First  
19 Miracle Productions as an entity it represents?

20 MS. PLOVNIK: I object to the  
21 characterization that there's nothing in the  
22 record, because it mischaracterizes MPAA's

149

1 production. But I might be a little premature,  
2 because the witness hasn't really answered. So  
3 that's halfway up.

4 JUDGE BARRETT: Okay, then you can go.

5 MS. PLOVNICK: Halfway back down.

6 THE WITNESS: In the record? No,  
7 there's nothing in the record.

8 BY MR. BOYDSTON:

9 Q And we've been focusing just on First  
10 Miracle Productions as an example. Would your  
11 answers to these questions be the same for all  
12 the entities in Exhibit 12?

13 A It would, with the exception of those  
14 circumstances for certain years in which certain  
15 entities have contracted direct with the MPAA,  
16 and there are some. But we haven't challenged  
17 those. These are those where the circumstance  
18 exists, that we didn't identify particular years,  
19 which would identify which claims we're  
20 challenging.

21 That was in a separate document that  
22 the Judges request that we prepare, and we gave I

150

1 think about a week ago or something like that.  
2 So let me give you an example. If you were two  
3 -- because this is going to come up over and over  
4 again probably.

5 If you look at the second page, you'll  
6 see BBC Worldwide Americas. BBC Worldwide  
7 Americas is -- for certain years has contracted  
8 directly with the MPAA.

9 In other years, it's claimed through  
10 an agent, and that was actually a big issue that  
11 came up and will come up here again in the  
12 2000 2003 proceedings, where BBC was claimed by  
13 the MPAA, but you might say that the chain of  
14 agency was the MPAA represented Fintage, a Dutch  
15 entity, which represented EGEDA, a Spanish  
16 collection entity, which purported to represent  
17 BBC.

18 And it's one of our exhibits, but BBC  
19 had no knowledge who even Fintage was.

20 Q Have you calculated the percentage of  
21 IPG, excuse me. Have you calculated the  
22 percentage of MPAA claimants who are represented

151

1 only by an agent, rather than having made claims  
2 themselves?

3 A Well, the way I do it, because I  
4 thought it would be a lot more relevant, is I  
5 calculated program claim combinations. So we  
6 would take a particular program associated with a  
7 particular claimant and for a particular year,  
8 and I counted those up. I think I had it in the  
9 declaration and I won't --

10 Q Please take a look at what's been  
11 marked as Exhibit 11.

12 A All right.

13 Q And I believe Exhibit 11 is a  
14 declaration drafted by yourself?

15 A Yes.

16 Q And Your Honor, I'm not going to move  
17 to admit this, but I would like to direct -- if I  
18 may, I'd like to direct the witness' attention to  
19 a paragraph, simply to refresh his recollection  
20 on a calculation he made.

21 JUDGE BARRETT: You may do so.

22 BY MR. BOYDSTON:

152

1 Q Thank you, Your Honor. Please take a  
2 look at page two, paragraph four, and tell me if  
3 that refreshes your recollection as to the result  
4 of that calculation?

5 A Right. The calculation I made was an  
6 aggregate of the MPAA program claims, and again  
7 this is based on the Excel spreadsheet that they  
8 provided to us. There were 43,628 unique program  
9 claimant year combinations.

10 Of those, 19,527 were being made by  
11 agents purporting to represent the underlying  
12 copyright owner. That underlying copyright  
13 owner, then in those situations it was an  
14 underlying copyright owner who had not submitted  
15 any direct evidence, any offered evidence of its  
16 own, indicating what program titles it was  
17 making claims for or confirming the agency  
18 relationship.

19 Your question was percentage, 44.75  
20 percent. That was the calculation.

21 Q Thank you. Are you familiar with an  
22 entity known as Screenwrites?

153

1 A Very well.

2 Q And what is Screenwrites to your  
3 knowledge?

4 A Screenwrites is -- and I've always  
5 referred to them as a quasi-governmental agency,  
6 but I know they're private, that's based in  
7 Australia. They collect a variety of secondary  
8 -- what I would generalize as secondary rights  
9 royalties for Australia and New Zealand.

10 They also will, at your request,  
11 collect royalties as an agent, or they're not  
12 acting as an agent in that circumstance, but as  
13 an agent in territories beyond Australia and New  
14 Zealand. However, the significance to this  
15 proceeding is that they are neither a producer  
16 nor a distributor of programming. They are not  
17 ever a copyright owner.

18 Q You have any understanding as to  
19 whether or not they are an agent in these  
20 proceedings?

21 A They have executed documents with the  
22 MPAA representing themselves, I believe always as

155

1 -- each of these would be, for instance, a  
2 program claimant year combination. So for  
3 Screenwrites, there's 79 program claimant year  
4 combinations.

5 It would represent the -- in the first  
6 column, the purported copyright owner I should  
7 say, the title for which claims being made and  
8 for the particular year. So you would actually  
9 see in that first column like, well look at the  
10 first example, Avalon Films.

11 JUDGE BARRETT: Uhh, we're just  
12 identifying the document, Mr. Galaz, and there's  
13 no question pending.

14 MR. BOYDSTON: Your Honor, I'd like to  
15 admit Exhibit 13.

16 MS. PLOVNICK: No objection, as long  
17 as it's clear that MPAA didn't create this  
18 document.

19 MR. BOYDSTON: So stipulated.

20 MR. MACLEAN: No objection.

21 JUDGE BARRETT: IPG 13 is admitted.  
22 (Whereupon, the above-referred to document

154

1 an agent. Nonetheless, in the Excel spreadsheet  
2 that we got from the MPAA, they're being  
3 attributed as the owner of several programs,  
4 where the underlying actual owner has not been  
5 identified.

6 MR. BOYDSTON: Please take a look at  
7 what's been marked as Exhibit 13, and are you  
8 familiar with this document?

9 (Whereupon, the above-referred to  
10 document was marked as IPG Exhibit No. 13 for  
11 identification.)

12 THE WITNESS: Yes.

13 BY MR. BOYDSTON:

14 Q Did you create this document?

15 A I created this based on the same Excel  
16 spreadsheet that I was referring to before, that  
17 was produced by the MPAA in response to the  
18 Judge's July 30 order.

19 Q And this is a list of -- references of  
20 apparent agent and the right title. Explain to  
21 us what this represents.

22 A This first column identifies, and this

156

1 was received into evidence as IPG Exhibit No.  
2 13.)

3 BY MR. BOYDSTON:

4 Q Mr. Galaz, can you explain to us what  
5 this depicts in terms of -- well, what it  
6 depicts, what it explains?

7 A The first column identified, this  
8 would have been a heading taken from the MPAA  
9 Excel spreadsheet, Owner Current Agent, and  
10 identifies the purported copyright owner. So  
11 you'll see in that first instance it says "Avalon  
12 Films Corporation (AVCS)."

13 AVCS, as the heading indicates, would  
14 be either the parent or the agent. Well, we know  
15 it's not a parent corporation; it's an agent.  
16 AVCS stands for Audio Visual Collection Society,  
17 also known as Screenwrites, the entity in  
18 Australia.

19 So in that first instance, the  
20 purported owner of the title bullet "Down Under"  
21 is Avalon Films Corporation. Its agent is AVCS.

22 If you look lower, and it was just the

157

1 way it was organized, towards I think it starts  
2 at number 49 on page two, Program Claimant Year  
3 49, you'll see that with everything from 49  
4 through Item 79, the particular program for the  
5 particular year is attributed to Screenwrites as  
6 the copyright owner.

7           So and this is -- this kind of goes  
8 towards my prior exhibit, when I was saying when  
9 you distill down the 1,500 down to actual owners,  
10 you'll see that this is an example where at 49 it  
11 says "Audio Visual Copyright Society Limited,  
12 trading as Screenwrites."

13           But then when you go down to 56, it  
14 says "Screenwrites AVCS," and then you go down to  
15 71 and it just says "Screenwrites." Those are  
16 all the same entity, the significance being here  
17 at least that Screenwrites is being attributed as  
18 the owner of these particular programs, which no  
19 possible way that they could actually be the  
20 owner. They could only be an agent, and the  
21 underlying agent isn't identified.

22           Q     Look at on that page two, Item 65, it

158

1 says "Owner Screenwrites AVCS," and then the  
2 program is "Outdoorsman with Buck McNeely." Are  
3 you familiar with the program "Outdoorsman with  
4 Buck McNeely"?

5           A     Yes, I'm very familiar with it.

6           Q     And how are you familiar with it?

7           A     Buck Neely and his company, Timberwolf  
8 Productions, was one of our earliest clients.  
9 He's out of St. Louis. It's an outdoor hunting  
10 show.

11           Q     Is that Timberwolf still a claimant,  
12 an IPG claimant?

13           A     Yes, and they submitted -- we'll get  
14 to it. They submitted a declaration here.

15           Q     Have you discussed with Mr. McNeely or  
16 his staff the fact that Screenwrites has listed  
17 him in certain documents in this proceeding?

18           A     Yes.

19           Q     And what is -- what did he tell you?

20           A     What he informed me is he has  
21 absolutely no idea who Screenwrites is.

22           Q     Are you familiar with an entity known

159

1 by the acronym EGEDA, E-G-E-D-A?

2           A     Yes, I am.

3           Q     And what is that entity to your  
4 knowledge?

5           A     EGEDA would be a comparable entity but  
6 for the territory of Spain. Comparable to  
7 Screenwrites in Australia. They collect various  
8 secondary rights, royalties. It's different than  
9 -- different royalties than what Screenwrites  
10 collects, but at the same time includes  
11 retransmission royalties.

12           Q     In reviewing the MPAA materials  
13 provided to you, did you -- and other materials  
14 in this proceeding, are you aware as to whether  
15 or not EGEDA is a contracted agent with the MPAA  
16 for these proceedings?

17           A     I know that -- no. I don't believe  
18 that they've actually contracted directly with  
19 the MPAA. I think in each circumstance, they  
20 have contracted through Fintage as the Dutch  
21 entity.

22           Q     So Fintage House has contracted as an

160

1 agent with the MPAA, for the MPAA to collect  
2 Fintage House properties, is what you're saying?

3           A     That's correct.

4           Q     But then what you're saying is in  
5 turn, Fintage House has contracted with EGEDA?

6           A     Correct. So Fintage is an agent, not  
7 an earner, not a distributor. EGEDA is an agent,  
8 not an owner or distributor.

9           MR. BOYDSTON: Please take a look at  
10 what's been marked as Exhibit 16, and tell if  
11 you're familiar with that?

12                   (Whereupon, the above-referred to  
13 document was marked as IPG Exhibit No. 16 for  
14 identification.)

15           THE WITNESS: Sixteen?

16           BY MR. BOYDSTON:

17           Q     Yes.

18           A     Okay.

19           Q     And are you familiar with that  
20 document?

21           A     Yes, I am.

22           Q     And did you create that document?



161

1 A Yes, I did.  
 2 Q And what did you create it from?  
 3 A Again, this was created from the Excel  
 4 spreadsheet that was produced by the MPAA  
 5 pursuant to the Judge's July 30 order this year.  
 6 Q And so from looking at that  
 7 information, you're able to see upon what  
 8 entities Fintage House is making claim; correct?  
 9 A Correct.  
 10 Q And was one of those EGEDA?  
 11 A EGEDA was one of the parties on whose  
 12 behalf Fintage House was making claim.  
 13 Q And then did that information also  
 14 display upon whose behalf EGEDA was making claim?  
 15 A Actually, I think that it went back  
 16 and forth. In some circumstances, at least in  
 17 these circumstances that are identified in this  
 18 particular Exhibit 16, these are all  
 19 circumstances in which EGEDA has also been  
 20 attributed as the copyright owner of these  
 21 particular programs for these particular years.  
 22 Q Now you say that EGEDA to your

162

1 knowledge functioned like Screenwriters did, but  
 2 only in Spain, i.e., collecting royalties, not  
 3 producing movies and TV shows; is that correct?  
 4 A I know for a fact that they're not an  
 5 owner or distributor of programming.  
 6 MR. BOYDSTON: Your Honor, we've got  
 7 a little bit past it, but I'd like to move to  
 8 admit Exhibit 16.  
 9 MS. PLOVNICK: With the same  
 10 clarification, that MPAA didn't create this  
 11 document, we have no objection.  
 12 MR. MACLEAN: No objection.  
 13 JUDGE BARRETT: Sixteen is admitted.  
 14 (Whereupon, the above-referred to  
 15 document was received into evidence as IPG  
 16 Exhibit No. 16.)  
 17 BY MR. BOYDSTON:  
 18 Q Thank you, Your Honor.  
 19 A I would make a qualification of 16,  
 20 though, and I only know because I'm looking at,  
 21 to refresh my recollection paragraph six of what  
 22 would have been my declaration.

163

1 This should have been 385 program year  
 2 combinations identified in 16, and when I went to  
 3 the end of 16 here, mine stops at 351. So it  
 4 appears that there may be a missing page.  
 5 MR. BOYDSTON: Your Honor, mine goes  
 6 all the way through to 385, but does anyone  
 7 else's?  
 8 MS. PLOVNICK: Mine ends at 351.  
 9 MR. MACLEAN: Yes, at the bottom of  
 10 page eight.  
 11 MR. BOYDSTON: Well, unfortunately it  
 12 appears that page nine has flown the coop. Mine  
 13 has it.  
 14 JUDGE BARRETT: Could you provide that  
 15 to all of us then please, Mr. Boydston?  
 16 MR. BOYDSTON: Yes, Your Honor, I  
 17 will.  
 18 BY MR. BOYDSTON:  
 19 Q Mr. Galaz, I think you may have just  
 20 said this, but I want to clarify. Based upon  
 21 what I see in this chart, it appears that what  
 22 you're reflecting is that EGEDA is purporting to

164

1 be the owner of these individual programs; is  
 2 that correct?  
 3 A That's correct.  
 4 Q And I think you just testified that  
 5 you know of your own personal knowledge that's  
 6 not the case?  
 7 A Correct.  
 8 MR. MACLEAN: Your Honor, relating to  
 9 this exhibit, I was just checking as Mr. Boydston  
 10 said that, to see if I have the last page of my  
 11 exhibit, and mine goes through page eight. But  
 12 in following page eight, there's another in my  
 13 copy a notice, as part of the same exhibit, and  
 14 it appears to be actually the next exhibit in  
 15 order, or identical to the next exhibit in order,  
 16 IPG P-17.  
 17 So I just wanted to say that I had  
 18 understood the only thing being admitted into  
 19 evidence was the Excel spreadsheet and not these  
 20 additional pages following the Excel spreadsheet,  
 21 if it's in their binder.  
 22 MR. BOYDSTON: Well actually that's

165

1 our intent.

2 THE WITNESS: Ma'am, if I could  
3 clarify, and maybe it's included with these. I  
4 just noticed the declaration I was looking at,  
5 which is 11. Page nine of what should be 16 is  
6 at the end of my page -- at the end of my  
7 exhibit.

8 MR. BOYDSTON: Your Honor, may I  
9 approach?

10 JUDGE BARRETT: You may.

11 MR. MACLEAN: It's in mine too, Your  
12 Honor.

13 JUDGE BARRETT: Yeah, there it is.  
14 (Pause.)

15 MR. BOYDSTON: Ahh, I see. So with  
16 the Court's permission, maybe I'll move that page  
17 --

18 JUDGE BARRETT: Yes. I'll ask the  
19 Clerk to make a note that the last -- what is  
20 currently the last page behind Tab 11 should be  
21 the last page behind Tab 16.

22 MR. BOYDSTON: I'll observe the

166

1 individual who I believe is responsible for that  
2 is trying to give birth to her second child a  
3 week from Friday, and has become a little  
4 forgetful.

5 JUDGE BARRETT: No, Mr. Boydston. If  
6 your office put these together, you are the  
7 individual who's responsible.

8 MR. BOYDSTON: Absolutely. I was only  
9 joking.

10 MR. MACLEAN: Your Honor, this is part  
11 of everybody else's exhibit binder. Are we also  
12 removing the pages following the Excel  
13 spreadsheet, that in my copy it says Exhibit 7,  
14 and then there's a page that says "Notice  
15 Regarding Representation of BBC Worldwide  
16 Americas," none of which appear to be part of the  
17 --

18 MR. BOYDSTON: Those would need to go  
19 to the next exhibit.

20 JUDGE BARRETT: I do not have that  
21 notice as part of 16.

22 MR. MACLEAN: Okay. That might be --

167

1 MS. PLOVNICK: I also do not.

2 THE WITNESS: That may be Exhibit 17.

3 MR. BOYDSTON: Yeah.

4 MR. MACLEAN: My copy also has an  
5 Exhibit 17, which appears identical. So if it's  
6 all right with you, I'll just take it out.

7 MR. BOYDSTON: Okay.

8 MR. MACLEAN: So if anything, I won't  
9 bother anybody with it.

10 JUDGE BARRETT: Thank you. Mr.  
11 Boydston.

12 MR. BOYDSTON: Thank you. Please take  
13 a look at what's been marked as Exhibit 14, and  
14 by its -- on its face, this appears to be a  
15 declaration of Mr. McNeely. Are you familiar  
16 with this declaration?

17 (Whereupon, the above-referred to  
18 document was marked as IPG Exhibit No. 14 for  
19 identification.)

20 THE WITNESS: Yes, I am.

21 BY MR. BOYDSTON:

22 Q And did you discuss the topics therein

168

1 with Mr. McNeely?

2 A Yes, I did.

3 Q And again, when you did discuss this  
4 with Mr. McNeely, Screenwrites with Mr. McNeely,  
5 what was the nature of his comments and  
6 conversation?

7 A It was whether -- my question was  
8 whether he had any familiarity with Screenwrites  
9 or AVCS, Audio Visual Collection Society. He  
10 communicated he had none.

11 I indicated that they were being  
12 attributed as the owner of The Outdoorsman, and  
13 McNeely asked if he had any familiarity as to why  
14 this would be the case. He said he never heard  
15 of Screenwrites or AVCS before, and that's why he  
16 willingly provided this declaration.

17 MR. BOYDSTON: Your Honor, I'd like to  
18 move Exhibit 14 into evidence.

19 MS. PLOVNICK: Your Honor, we have an  
20 objection to numbered paragraph three, especially  
21 the particular sentence that says "I have  
22 reviewed the complete program claims at hearing

169

1 between my represented entity and other  
2 claimants" and it goes on.

3 There's no documents attached to this  
4 declaration. So we do not have a copy of what  
5 exactly was reviewed by Mr. McNeely, and it was  
6 not produced to us.

7 And so we object, that this is an  
8 incomplete document, and it also has prejudiced  
9 our ability to prepare our rebuttal, in that we  
10 don't know exactly what the programs being  
11 reviewed are, other than what is referenced in  
12 paragraph four. Otherwise, we don't have a list.

13 MR. BOYDSTON: Your Honor, I think  
14 that goes to weight rather than admissibility,  
15 and by way of illustration, I would remind the  
16 Court that a number of the IPG, excuse me, none  
17 of the MPAA exhibits which -- or declarations  
18 rather, which have been admitted, referred to  
19 misrepresentations made by IPG, with no further  
20 detail, no attachments, nothing at all.

21 I didn't object to admissibility on  
22 those, because I thought it was admissible. It

170

1 simply went to there weight. If it's not  
2 described, it's not described, and I think that's  
3 up to the reader to make a judgment on it, and  
4 not exclude the statement in toto.

5 MS. PLOVNICK: If I may respond, all  
6 of MPAA's affidavits had attachments.

7 MR. BOYDSTON: But they did not --  
8 there's no explanation in the declaration as to  
9 what misrepresentations were made, and none of  
10 those attachments identified the  
11 misrepresentation.

12 JUDGE BARRETT: Well, just based on  
13 the reading of this, the objection's overruled.  
14 Exhibit --

15 MR. BOYDSTON: Fourteen.

16 JUDGE BARRETT: Fourteen is admitted.

17 (Whereupon, the above-referred to  
18 document was received into evidence as IPG  
19 Exhibit No. 14.)

20 MR. BOYDSTON: Thank you, Your Honor.  
21 Please take a look at what's been marked as  
22 Exhibit 15, and tell me are you familiar with

171

1 this document?

2 (Whereupon, the above-referred to  
3 document was marked as IPG Exhibit No. 15 for  
4 identification.)

5 THE WITNESS: Yes, I am. It appears  
6 to be a declaration by Jennifer Valle.

7 BY MR. BOYDSTON:

8 Q Who is Jennifer Valle, if you know?

9 A She's an employee with Lawrence Welk  
10 Syndication.

11 Q And does IPG have a connection with  
12 Lawrence Welk Syndication?

13 A We are representing claimant.

14 Q Did you discuss certain matters  
15 regarding these proceedings with Ms. Valle?

16 A Yes, and specifically that the program  
17 "From the Heart" was being claimed by AVCS as  
18 well.

19 Q When you say "AVCS," do you mean  
20 Screenwrites?

21 A Correct.

22 Q And what was Ms. Valle's reaction to

172

1 that?

2 A Same as Mr. McNeely's. They didn't  
3 know who Screenwrites was, and offered actually  
4 the declaration or to testify about it.

5 MR. BOYDSTON: Your Honor, I'd like to  
6 move Exhibit 15 into evidence.

7 MS. PLOVNICK: Your Honor, I'd just  
8 renew the same objection for the record,  
9 regarding the language in numbered paragraph  
10 three. Otherwise, I have no objection.

11 MR. MACLEAN: No objection, Your  
12 Honor.

13 JUDGE BARRETT: Exhibit 15 is  
14 admitted.

15 (Whereupon, the above-referred to  
16 document was received into evidence as IPG  
17 Exhibit No. 15.)

18 MR. BOYDSTON: Thank you, Your Honor.  
19 Please take a look at what's been marked Exhibit  
20 17, and tell me if you're familiar with this?

21 (Whereupon, the above-referred to  
22 document was marked as IPG Exhibit No. 17 for

173

1 identification.)

2 THE WITNESS: I am.

3 BY MR. BOYDSTON:

4 Q And it purports to be a "Notice  
5 Regarding Representation of BBC Worldwide  
6 Americas." It's executed by a Mr. Vernon Chiu.  
7 Has IPG entered into any contracts with BBC  
8 Worldwide Americas?

9 A Yes, we did.

10 Q And has IPG filed claims on behalf of  
11 BCC Worldwide Americas?

12 A Yes, we have.

13 Q And did you discuss this declaration  
14 with Mr. Chiu?

15 A Yes. This was actually -- not only  
16 was a declaration, but it was actually filed in  
17 the court record in the 2000 and 2003  
18 proceedings, when it was revealed that there was  
19 also being -- there was also a claim being made  
20 on behalf of the BBC by MPAA.

21 This is for calendar years 2000 and  
22 2003. So this was not an instance in which BBC

174

1 had contracted directly with the MPAA. It was  
2 rather a claim purportedly on behalf of BBC being  
3 made by agents.

4 When we looked further into it, it was  
5 revealed that the sequence --

6 MR. MACLEAN: Objection, hearsay. But  
7 also I believe he's getting into the content of  
8 this declaration and the content of --.

9 JUDGE BARRETT: Thank you, sustained.

10 BY MR. BOYDSTON:

11 Q Thank you, Your Honor. This is dated  
12 May 17th, 2013. Did you discuss the content of  
13 this with Mr. Chiu in or around that time?

14 A Yes, I did.

15 Q And did you explain to Mr. Chiu what  
16 you were just saying a minute ago, that based on  
17 your review of certain records, that it appeared  
18 that BBC Worldwide was being represented in part  
19 by EGEDA?

20 A Correct. The sequence of events was  
21 that the MPAA was representing with an agent  
22 heading, branded with Fintage. Was purporting to

175

1 represent EGEDA, also an agent.

2 JUDGE BARRETT: I'm sorry, has it been  
3 offered and admitted? We're still getting into  
4 the content.

5 MR. BOYDSTON: I'm sorry, Your Honor.  
6 Sometimes I think we need more, perhaps more  
7 punishment than we do. Your Honor, I'd like to  
8 move Exhibit 17 into evidence.

9 MS. PLOVNICK: I have an objection to  
10 Exhibit 17. Actually, I have two. First is  
11 relevance, because this is -- appears to be  
12 related solely to 2000 and 2003 cable royalties.

13 Second is that it references an  
14 attached Exhibit A that my copy does not have.  
15 The majority of the document is about the  
16 attached Exhibit A, which is not included in  
17 Exhibit IPG 17, and so it is incomplete.

18 MR. MACLEAN: Your Honor, I object on  
19 the grounds of completeness. My copy also does  
20 not include an Exhibit A, as referenced in the  
21 declaration.

22 MR. BOYDSTON: Mine does not either.

176

1 JUDGE BARRETT: Exhibit, I'm sorry, is  
2 this 17? Exhibit 17 is not admitted at this  
3 time, for reasons of incompleteness. But if it  
4 was in fact filed in the prior proceeding, I  
5 think it would be possible to make it complete.  
6 So I won't foreclose that possibility.

7 MR. BOYDSTON: Thank you, Your Honor.  
8 Given that possibility, may I ask a few more  
9 questions of the witness?

10 JUDGE BARRETT: You may.

11 BY MR. BOYDSTON:

12 Q Do you know --

13 A I'm sorry. I was actually still  
14 responding.

15 Q Please continue.

16 A The question that was --

17 MR. MACLEAN: Your Honor --

18 JUDGE BARRETT: Part of your objection  
19 was noted, and that's also granted. Ask a  
20 question, Mr. Boydston.

21 BY MR. BOYDSTON:

22 Q Oh, I didn't remember his objection.

177

1 I think I asked you about whether or not you  
2 communicated to Mr. Chiu that your view of the  
3 records with regard to the 2000-2003 proceeding  
4 included, or had -- there was information in  
5 those records that demonstrated that EGEDA was  
6 making claims for BBC; is that correct?  
7 A There was --  
8 MR. MACLEAN: Objection, leading.  
9 JUDGE BARRETT: Overruled this time.  
10 THE WITNESS: There was evidence that  
11 EGEDA was making claim for the BBC, that Fintage  
12 was making claim on behalf of EGEDA, and then  
13 Fintage was the party that contracted with the  
14 MPAA.  
15 BY MR. BOYDSTON:  
16 Q When you explained that to Mr. Chiu,  
17 what was his reaction?  
18 A They had no idea who Fintage is.  
19 Q And did you discuss -- and Mr. Chiu,  
20 what is his position at BBC?  
21 A General counsel.  
22 Q And that sounds like he's an attorney.

178

1 Is it your understanding he's an attorney?  
2 A Yes, it is.  
3 Q And prior to that time, had you spoken  
4 before or communicated before to Mr. Chiu?  
5 A I've communicated several times with  
6 Mr. Chiu over the last decade.  
7 Q In part, were some of those  
8 communications to obtain information to file  
9 claims on behalf of BBC?  
10 A The best part of it. He was actually  
11 the individual who we originally spoke with when  
12 they contracted with IPG.  
13 Q Did Mr. Chiu, when you had those  
14 communications with him prior to this time  
15 period, appear to have a command of this  
16 information, as far as you could tell?  
17 A He did have a command of the  
18 information, and just so I am clear about this,  
19 the contract that we entered into with BBC  
20 doesn't distinguish between cable and satellite.  
21 It's cable and satellite retransmission --  
22 Q Did you discuss with Mr. Chiu the idea

179

1 of drafting a declaration such as what would be  
2 seen in this limited format here?  
3 A Are you talking about this one or for  
4 this proceeding?  
5 Q I'm talking about this one.  
6 A Yes. I spoke to him about this. He  
7 was willing to execute a declaration to clarify  
8 the rights and given, I think it was actually his  
9 suggestion, that it actually be filed as part of  
10 the record, which is why it ended up being  
11 submitted by --.  
12 Q Now obviously this is a different  
13 proceeding than what this was originally created  
14 for. To your knowledge, in the proceedings that  
15 we're in now, for the years we're in now, do you  
16 know whether or not EGEDA has also claimed in  
17 this proceeding -- made claims on behalf of BBC?  
18 A I know that they've actually withdrawn  
19 it.  
20 Q Okay. Do you recall receiving this  
21 document complete with the Exhibit A at any time  
22 from Mr. Chiu?

180

1 A Yes, and that's what ultimately got  
2 filed with the -- actually, I think BBC filed it  
3 directly themselves, but I've got a copy  
4 somewhere with the attachment.  
5 Q Thank you. Now in your review of the  
6 MPAA material that was provided to you, have you  
7 observed any instances in which the MPAA was  
8 attributing that it represented broadcasters, as  
9 opposed to an agent or anyone else, with  
10 ownership of certain programming?  
11 A Several circumstances.  
12 MR. BOYDSTON: Let me ask you to take,  
13 a look at what's been marked Exhibit 18.  
14 (Whereupon, the above-referred to  
15 document was marked as IPG Exhibit No. 18 for  
16 identification.)  
17 THE WITNESS: Okay.  
18 BY MR. BOYDSTON:  
19 Q This appears to be a declaration by  
20 Heather Cochran. Do you know who Heather Cochran  
21 is?  
22 A Yes, she's an employee. I think she's

181

1 the I think they actually say here that she --  
2 I think she's the chief financial officer for the  
3 Academy of Television Arts and Sciences.

4 Q And does IPG have a relationship with  
5 the Academy of Television Arts and Sciences?

6 A Yes, a long-time client claimant we've  
7 represented since 1998 maybe.

8 Q And did you -- in reviewing the  
9 materials provided by the MPAA, did you see  
10 anything in those materials referencing the  
11 Academy of Television Arts and Sciences, in  
12 connection with any broadcaster?

13 A Well, did I see anything with regard  
14 to ATAS, yes. ATAS has basically just one  
15 program, it's the Emmy Awards, and sometimes in  
16 the daily we have it. It shows up as the awards,  
17 Emmy Awards, dot Emmy Awards, Emmy Awards dot.

18 But it's basically the Emmy Awards for  
19 any given particular year. I saw within the  
20 MPAA data reference to the fact that they were  
21 attributing ownership to four different entities  
22 in four different years. In the other years,

183

1 show the Emmy Awards as Mr. Galaz just testified,  
2 Prime Time Emmy Awards.

3 MPAA is not claiming the title "Prime  
4 Time Emmy Awards" or "Emmy Awards," if you look  
5 through Ms. Saunders' Appendix B to her cable and  
6 satellite testimony, it's not listed.

7 We checked for the ones that are  
8 listed and that are listed here in paragraph five  
9 of this declaration.

10 JUDGE BARRETT: I'm sorry. Ms.  
11 Plovnick, what's the legal basis of your  
12 objection?

13 MS. PLOVNICK: So this is irrelevant,  
14 Your Honor, because there is no claim being made  
15 in this proceeding by MPAA for the title "Prime  
16 Time Emmy Awards" or Emmy Awards Prime Time.

17 JUDGE BARRETT: The relevance, Mr.  
18 Boydston?

19 MR. BOYDSTON: May I establish that by  
20 questions?

21 JUDGE BARRETT: You may question the  
22 witness.

182

1 they were not making claim for it.

2 One year it was ABC, one year it was  
3 CBS, one year it was NBC, another year it was  
4 Content International, and I think that was  
5 actually vis-a-vis an agent. Content  
6 International is not even a broadcaster. That's  
7 actually the foreign distributor of the Emmy  
8 Awards.

9 Q And did that surprise you?

10 A Very much it surprised ATAS' -- the  
11 Academy of Television Arts and Sciences as well.

12 MR. MACLEAN: Objection, Objection.  
13 Objection first of all as to relevance of Mr.  
14 Galaz's surprise. Objection second of all to Mr.  
15 Galaz's speculation as to whether somebody else  
16 was surprised.

17 MS. PLOVNICK: I have another  
18 objection just in general to this --

19 JUDGE BARRETT: Sustained, Mr.  
20 MacLean. You want to put yours on the record?

21 MS. PLOVNICK: Yeah, I do. This  
22 affidavit, as I understand it, is regarding the

184

1 BY MR. BOYDSTON:

2 Q Mr. Galaz, what was the basis -- did  
3 you have a belief that in fact the MPAA was  
4 making claim for this?

5 A Yes. Based on the Excel spreadsheet  
6 that was provided to us, which all this was based  
7 on, it indicated that Emmy Awards was being  
8 claimed by the MPAA for the years that I -- I  
9 should say the years that ultimately were  
10 referenced by Ms. Cochran in her declaration.

11 Specifically, that for calendar year  
12 2000, it was being attributed to American  
13 Broadcasting Companies; for 2001, CBS  
14 Broadcasting Inc.; for 2002, NBC Universal, Inc.;  
15 and for 2009, Content Film International.

16 I can't attest, because I haven't gone  
17 back to look, as to what appears in the written  
18 direct statement, the appendix to Ms. Saunders'  
19 declaration. But I can attest to what appeared  
20 within the Excel spreadsheet that was produced by  
21 the MPAA pursuant to the Judge's July 30, 2014  
22 order.

185

1 MR. BOYDSTON: Your Honor, I'd submit  
2 that it's relevant. It may be a question of  
3 evidence as to whether or not such claim is in  
4 fact made. There seems to be information on both  
5 sides of the matter.

6 MS. PLOVNIK: Your Honor, the written  
7 direct statement lists, you know, Jane Saunders'  
8 testimony that was filed as part of our written  
9 direct statement, has our title list. Those are  
10 the titles that we are claiming.

11 The fact that a title may have been on  
12 a certification and was stricken out at some  
13 point, if it was, we're not claiming it. So I  
14 think it's not relevant.

15 MR. BOYDSTON: The last thing I'll say  
16 is this is exactly the same situation as what we  
17 were attacked with, with regard to A&E  
18 Television. Yes, it may have been on some of our  
19 claims. We did not include it in our written --  
20 in our rebuttal statement.

21 And yet that evidence came in anyway,  
22 in support of certain points that MPAA is trying

186

1 to make. I submit this should come in. It's the  
2 exact same scenario, to try to support the point  
3 that we're making, which is that the MPAA is  
4 sometimes representing MDs that claim to have  
5 programs that they do not.

6 Now granted, they're not pushing it  
7 here just like we weren't pushing A&E. But to  
8 the extent they can bring in evidence that at one  
9 point in time we claimed A&E, we can bring in  
10 evidence at one point in time they claimed the  
11 Emmys.

12 MS. PLOVNIK: We have never claimed  
13 these titles in this proceeding at all, unlike  
14 A&E, which they did have on a list.

15 MR. MACLEAN: Your Honor, I apologize.  
16 I believe it is possible I lost the thread of  
17 this conversation. However, my recollection is  
18 that the initial objection was to a question as  
19 to whether Mr. Galaz was surprised.

20 (Simultaneous speaking.)

21 MR. MACLEAN: Now I'm not clear on  
22 what is exactly being objected to.

187

1 JUDGE BARRETT: Well, Ms. Plovnick is  
2 making a record of her objection to the exhibit.

3 MS. PLOVNIK: And the line of  
4 questioning.

5 JUDGE BARRETT: And the line of  
6 questioning.

7 MR. MACLEAN: Your Honor, I don't  
8 believe the exhibit has been offered into  
9 evidence.

10 MR. BOYDSTON: No, I have not gotten  
11 there.

12 JUDGE BARRETT: To the line of  
13 questioning, that one is sustained.

14 MR. BOYDSTON: Your Honor, I'd like to  
15 move Exhibit 18 into evidence.

16 MS. PLOVNIK: Renew my objection,  
17 Your Honor.

18 JUDGE BARRETT: Sustained. Exhibit 18  
19 is rejected.

20 (Whereupon, the above-referred to  
21 document identified as IPG Exhibit No. 18 was  
22 rejected.)

188

1 MS. PLOVNIK: I'm sorry. Can you  
2 repeat that?

3 JUDGE BARRETT: Exhibit 18 is  
4 rejected. Or excuse me, refused is the  
5 appropriate word, I believe.

6 BY MR. BOYDSTON:  
7 Q Are you aware of other broadcaster,  
8 broadcasters that have attributed ownership to  
9 various programs that you believe is incorrect?

10 A Well, prefacing my response by saying  
11 that what I'm relying on is the Excel spreadsheet  
12 that was provided by the MPAA, that was  
13 purporting to indicate which programs were being  
14 claimed and associated with a particular owner  
15 and agent for a particular year, I would say yes.

16 But that would be the same situation  
17 as with regard to the Emmy Awards. When I  
18 reviewed the spreadsheet, the Excel spreadsheet  
19 that was provided electronically because it's  
20 voluminous, I found numerous circumstances in  
21 which the MPAA was making claim for programs that  
22 I know firsthand are being represented by IPG,

189

1 pursuant to an agreement with an IPG-represented  
2 claimant, and in circumstances where those  
3 individuals in some cases hadn't even been  
4 broadcast by the particular network.

5 Q Let's stop for a second, for a little  
6 clarification of the spreadsheet that we've been  
7 talking about. Once again, where did you obtain  
8 this or who gave it to you?

9 A The MPAA provided it. In the -- the  
10 problem is that in the MPAA written direct  
11 statement, it indicates, and it's about a 100  
12 page-long document, that's the appendix in this  
13 Jane Saunders' testimony, it says "We're making  
14 claim for all these programs."

15 And it's not just on their page, which  
16 is I think four columns in very small type and so  
17 forth; it's literally thousands of programs. But  
18 it doesn't indicate on that appendix who the  
19 claimant is, on whose behalf the MPAA is making  
20 the claim, or whether it's an agent or whether  
21 it's actually the owner, whoever. Doesn't make  
22 that.

190

1 We requested and discovered that  
2 information; it was denied. We moved to compel  
3 it, and the Judges said, of course, you know, you  
4 have -- if you're acting as an agent, you have to  
5 identify which claimant, on whose behalf you're  
6 making the program claim.

7 Pursuant to the order of July 30th,  
8 2014, the Judges ordered the MPAA to then provide  
9 to us an Excel spreadsheet that information, that  
10 specifically identifies the underlying owner, the  
11 agent, the program and the year for which the  
12 claim is being made. So we have all that  
13 information.

14 That's the information from which I  
15 derived all of this. That's the information from  
16 where I derived, for example, that the Emmy  
17 Awards has been claimed by the MPAA for four  
18 years and on whose behalf. So to the extent --

19 Q Just to clarify if I may, let me ask  
20 a question. Just to clarify, this is in this  
21 proceeding. So in other words, the information  
22 you were given by the MPAA connecting the Emmys

191

1 with ABC, CBS, etcetera, was for this  
2 proceeding; correct?

3 A That's correct. So it's --

4 JUDGE BARRETT: Excuse me. Ms.  
5 Plovnick, I thought you represented to the court  
6 moments ago that MPAA had never filed a claim or  
7 was not claiming or representing a claimant?  
8 MS. PLOVNICK: We are not, and if you  
9 look at our written direct testimony, and it's  
10 Saunders Exhibit, I think it's B is the title  
11 list for cable and satellite, the Prime Time Emmy  
12 Awards is not there. That is our testimony.

13 We did produce electronic copies of  
14 that to them pursuant to the Judge's order. So  
15 they have it in paper and they have it in  
16 electronic copy. We also, as Ms. Saunders  
17 testified, created an Excel workbook to digitize  
18 the certifications, which as you see have a lot  
19 of handwritten notes on them, and we can't  
20 capture handwritten notes in that way, although  
21 we could try.

22 But so what we've got is a file that

192

1 was created, pursuant to the Judge's order, to  
2 help assist them with dealing with the paper  
3 documents that were produced to them already,  
4 which were voluminous and link up each MPAA  
5 claimant with the titles that they had certified  
6 and had all those notes on them.

7 But what I was representing to you is  
8 in this proceeding, we have never claimed the  
9 Prime Time Emmy Awards, because it's not in the  
10 list of titles that we submitted as a part of our  
11 written direct statement.

12 MR. BOYDSTON: The problem is it's in  
13 this thing they gave us pursuant to discovery.  
14 Now it may be there was a mistake on their part,  
15 but if so, we should be able to get it into  
16 evidence, to explain that there's been a mistake.

17 MS. PLOVNICK: It's an Excel workbook  
18 and you saw, looking at the ones that were  
19 already admitted, they're handwritten notes and  
20 sometimes they strike through and things like  
21 that.

22 JUDGE STRICKLER: Is that information



193

1 on the -- in the Excel workbook, the one the  
 2 witness is testifying to?

3 MS. PLOVNICK: To the extent that --  
 4 to the extent it can be, but --

5 JUDGE STRICKLER: Well, I'm not asking  
 6 for can be. He said it is, and you're apparently  
 7 saying it is not. Are you fact saying he's  
 8 wrong, it's not in any document you've provided  
 9 in discovery?

10 MS. PLOVNICK: We have paper documents  
 11 that have all of that in there.

12 JUDGE STRICKLER: So it is in the  
 13 discovery?

14 MS. PLOVNICK: It is provided in  
 15 discovery, absolutely Your Honor. But it's in  
 16 discovery, but the title was not claimed by us.  
 17 It is not being claimed by us. It may have been  
 18 on a certification as not being claimed, but we  
 19 are not well pursuing a claim.

20 JUDGE BARRETT: What the witness is  
 21 testifying is that it was on a spreadsheet. Now  
 22 Mr. Galaz, was it on a spreadsheet that lined out

194

1 --

2 THE WITNESS: Absolutely not, and  
 3 that's not --

4 JUDGE BARRETT: I know, it's a yes or  
 5 no.

6 THE WITNESS: Absolutely not, no.

7 JUDGE STRICKLER: Was it lined  
 8 out? Do you know or you don't recall?

9 MS. PLOVNICK: I do not. I do not  
 10 know.

11 THE WITNESS: I have --

12 MR. BOYDSTON: There's no question  
 13 pending. Your Honor, I renew my offer or my  
 14 request to admit Exhibit 18.

15 JUDGE BARRETT: Exhibit 18 is going to  
 16 be admitted. We're going to have to eventually  
 17 slog through this apparently, so go ahead.

18 (Whereupon, the above-referred to  
 19 document was received into evidence as IPG  
 20 Exhibit No. 18.)

21 MR. BOYDSTON: Thank you, Your Honor.  
 22 Let me ask you to take a look at what's been

195

1 marked as Exhibit 20, and it purports to be a  
 2 declaration b Andre Fair. Are you familiar with  
 3 Mr. Fair?

4 (Whereupon, the above-referred to  
 5 document was marked as IPG Exhibit No. 20 for  
 6 identification.)

7 THE WITNESS: Yes, I am.

8 BY MR. BOYDSTON:

9 Q And do you know what entity he works  
 10 with?

11 A He works with Willie Wilson  
 12 Productions. He's an executive there.

13 Q And does IPG have a relationship with  
 14 Willie Wilson Productions?

15 A Yes. We've been representing them for  
 16 several years.

17 Q And are you familiar with this  
 18 declaration?

19 A Yes, I am.

20 Q Did you discuss this declaration with  
 21 Mr. Fair?

22 A Yes, I have.

196

1 Q And in what context did this come up?

2 A It was in the context of again, the  
 3 MPAA-produced Excel spreadsheet, indicating that  
 4 the program Singsation was being attributed to  
 5 CBS Broadcasting, for I think it was calendar  
 6 year 2000.

7 Q And when you brought that to Mr.  
 8 Wilson, or not Mr. Wilson. When you brought that  
 9 to Mr. Fair's attention, what was his response?

10 A That it was absolutely --

11 MR. MACLEAN: Objection, hearsay, his  
 12 response.

13 MR. BOYDSTON: It is, Your Honor.  
 14 There's no question.

15 JUDGE BARRETT: Sustained.

16 MR. BOYDSTON: Your Honor, I'd like to  
 17 move that Exhibit 20 be admitted.

18 MS. PLOVNICK: We have no objection.

19 MR. MACLEAN: Your Honor, may I voir  
 20 dire?

21 JUDGE BARRETT: You may.

22 VOIR DIRE

197

1 BY MR. MACLEAN:

2 Q Mr. Galaz, do you personally know  
3 Andre Fair?

4 A No. Well I mean from the standpoint  
5 of have I ever met him in person? No.

6 Q How have you communicated with Andre  
7 Fair?

8 A Through several people at Willie  
9 Wilson Productions that we periodically deal  
10 with, and he's one of them.

11 Q What is -- do you know what position  
12 Mr. Fair has with Willie Wilson Productions?

13 A My understanding was he was an  
14 executive. The initial person we were dealing  
15 with was Roxanne Jackson, then Mr. Wilson and  
16 they directed us to have Mr. Fair execute this  
17 particular declaration.

18 Q My question was do you have an  
19 understanding as to what position --

20 A I don't have a firsthand knowledge of  
21 what his position is with Willie Wilson  
22 Productions.

198

1 Q In the declaration, he says "I am an  
2 authorized representative." Do you know what  
3 authority he has as a representative of Willie  
4 Wilson Productions?

5 MR. BOYDSTON: The person who's  
6 authorized.

7 MR. MACLEAN: Your Honor, I object to  
8 that.

9 MR. BOYDSTON: I apologize.  
10 Withdrawn.

11 JUDGE BARRETT: It's stricken.

12 THE WITNESS: Do I know exactly the --  
13 I'm sorry, what his position is or --

14 BY MR. MACLEAN:

15 Q I'm just asking if you know in what  
16 capacity he is an authorized representative?

17 A No. I just know that Willie Wilson  
18 and other individuals I've dealt with --

19 Q You don't know.

20 A Can I finish?

21 Q Well my question --

22 MR. BOYDSTON: You need to let the

199

1 witness finish answering.

2 JUDGE BARRETT: It was, I think, a yes  
3 or no answer. So he doesn't need to say anymore  
4 than that.

5 BY MR. MACLEAN:

6 Q Who drafted it? Who drafted this  
7 declaration?

8 A Well, we certainly sent out the form  
9 after speaking with them. So I would say that  
10 the initial draft was ours. If you'll give me a  
11 moment, I'll tell you whether anything was --

12 Q And when you say "it was ours," do you  
13 mean it was yours?

14 A I'd say it was initially drafted by  
15 IPG.

16 Q By who in IPG?

17 A That would be me.

18 MR. MACLEAN: Your Honor, I object on  
19 the basis of hearsay and also foundation.

20 There's no foundation in this declaration  
21 establishing Mr. Fair's basis for knowledge for  
22 what he says. That's my objection.

200

1 MR. BOYDSTON: Your Honor, he says  
2 he's an authorized representative. That  
3 indicates that he is representing that he is  
4 authorized to represent the company in this  
5 context and make these statements.

6 MR. MACLEAN: Your Honor, being  
7 authorized to say something doesn't mean you're  
8 saying something that you have personal  
9 knowledge.

10 JUDGE BARRETT: Except for the  
11 preceding paragraph says "I have personal  
12 knowledge."

13 MR. MACLEAN: But without foundation  
14 for how he has personal knowledge.

15 JUDGE BARRETT: Okay. Exhibit 20 is  
16 admitted.

17 (Whereupon, the above-referred to  
18 document was received into evidence as IPG  
19 Exhibit No. 20.)

20 DIRECT EXAMINATION (resumed)

21 BY MR. BOYDSTON:

22 Q Did you ask Mr. Fair whether or not

201

1 CBS Broadcasting was authorized to make claim on  
2 behalf in these matters?  
3 A Yes.  
4 Q What did he say?  
5 A He said that they had --  
6 MR. MACLEAN: Objection, hearsay.  
7 MR. BOYDSTON: Yes, it is hearsay, and  
8 it's merely what's in the -- I can have him read  
9 what's in here. I think --  
10 (Simultaneous speaking.)  
11 JUDGE BARRETT: Well, if the  
12 declaration is admitted into evidence and all Mr.  
13 Galaz is going to do is to tell us what's in the  
14 declaration, I think it's completely unnecessary.  
15 MR. BOYDSTON: Thank you, Your Honor.  
16 I understand. Please take a look at what's been  
17 marked as Exhibit 21, and are you -- you  
18 understand what that document is?  
19 (Whereupon, the above-referred to  
20 document was marked as IPG Exhibit No. 21 for  
21 identification.)  
22 THE WITNESS: Yes, it is. Yes, I do,

202

1 I'm sorry.  
2 BY MR. BOYDSTON:  
3 Q And what is it?  
4 A This is a printout from the online  
5 records of the U.S. Copyright Office, identifying  
6 the copyright claimant to the title "AFI Life  
7 Achievement Award: A Tribute to Barbara  
8 Streisand, an AFI Production."  
9 Q And what does say in it to that  
10 effect?  
11 A It indicates that American Film  
12 Institute is the copyright claimant to that  
13 particular work.  
14 Q Now have you seen any representations  
15 in the MPAA materials to the contrary of that?  
16 A Yes, I have, and I'm trying to recall  
17 which broadcaster it was off the top of my head,  
18 that made claim to that particular program. I  
19 think it actually appears in some of the MPAA  
20 materials that they've or have had introduced to  
21 this point.  
22 Q And which materials were those if you

203

1 recall? Was it this spreadsheet that was  
2 produced pursuant to discovery, or other material  
3 if you know?  
4 A Well yes, certainly that. But --  
5 Q That meaning?  
6 A I'm sorry. It was the Excel  
7 spreadsheet that the MPAA produced. It indicated  
8 that a broadcaster was being attributed ownership  
9 of this particular program by AFI, that was  
10 authored by AFI and owned by AFI.  
11 Q Did you obtain the documents that  
12 comprise Exhibit 21 off the Copyright Office's  
13 Internet site?  
14 A Yes.  
15 MR. BOYDSTON: Your Honor, I'd like to  
16 move that Exhibit 21 be admitted.  
17 MS. PLOVNICK: Your Honor, I mean I  
18 think we have an objection to this. I mean this  
19 is -- it is just a search. It's a Copyright  
20 Office record. So it's really a public record.  
21 MR. MACLEAN: No objection.  
22 JUDGE BARRETT: Exhibit 21 is

204

1 admitted.  
2 (Whereupon, the above-referred to  
3 document was received into evidence as IPG  
4 Exhibit No. 21.)  
5 MR. BOYDSTON: Please take a look at  
6 what's been marked as Exhibit 22, and tell me if  
7 you are familiar with that document?  
8 (Whereupon, the above-referred to  
9 document was marked as IPG Exhibit No. 22 for  
10 identification.)  
11 THE WITNESS: That's a comparable  
12 document for the title "DragonBall Z."  
13 BY MR. BOYDSTON:  
14 Q And does -- DragonBall Z's the title  
15 of a program; correct?  
16 A Yes.  
17 Q And do you know who owns DragonBall Z?  
18 A Yes. For the United States it's  
19 Funimation, which is an IPG-represented claimant.  
20 Q Now have you seen in the MPAA  
21 materials information indicating that the  
22 broadcaster is claiming the right to collect

205

1 royalties for DragonBall Z?

2 A Yes, and that was actually one of the  
3 items were addressing yesterday, that I believe  
4 was ABC Family Worldwide.

5 Q And did you obtain this document off  
6 the Copyright Office Internet site?

7 A Yes.

8 Q And what does this demonstrate, in  
9 terms of the ownership of the program involved?

10 A That the copyright claimant for the  
11 United States is Toei Animation Company, but with  
12 DragonBall Z, the U.S. owner is Funimation  
13 Productions.

14 That's why it's also identified as --  
15 well, it's interesting, because up here it says  
16 "Copyright claimant." But a co-copyright  
17 claimant is Funimation Productions.

18 MR. BOYDSTON: Your Honor, I'd like to  
19 move Exhibit 22 into evidence.

20 MS. PLOVNICK: I object to the answer,  
21 where he was trying to -- Mr. Galaz characterized  
22 ownership for the U.S. in this. I don't really

206

1 see how that came from this document. We don't  
2 have any objection to this document, but his  
3 characterization.

4 JUDGE BARRETT: Okay, thank you. The  
5 document is admitted. Exhibit 22 is admitted.

6 (Whereupon, the above-referred to  
7 document was received into evidence as IPG  
8 Exhibit No. 22.)

9 MR. BOYDSTON: Thank you, Your Honor.  
10 Please take a look at what's been marked as  
11 Exhibit 23. It appears to be a declaration by an  
12 individual Tony Intelsiano, with Mark Anthony  
13 Entertainment. Have you communicated with Mr.  
14 Intelsiano?

15 (Whereupon, the above-referred to  
16 document was marked as IPG Exhibit No. 23 for  
17 identification.)

18 THE WITNESS: Intelsiano.

19 BY MR. BOYDSTON:

20 Q Thank you.

21 A Yes, I have. He's the owner of Mark  
22 Anthony Entertainment.

207

1 Q And does IPG have a relationship with  
2 Mark Anthony Entertainment?

3 A Yes, a contractual relationship.  
4 They're an IPG client and have been for several  
5 years.

6 Q And in reviewing the MPAA documents  
7 and spreadsheet, do you see some indication that  
8 the television show Main Floor was being claimed  
9 by a broadcaster?

10 A Yes. It indicated that -- and I say  
11 "it." Again, the Excel spreadsheet that was  
12 provided to IPG indicated that it was being  
13 attributed to American Broadcasting Companies for  
14 calendar years 2001 and 2002.

15 Q Did you discuss that with Mister --  
16 I'll just call him Mr. I?

17 A Yes, I did.

18 Q And what was his reaction?

19 A He confirmed --

20 MR. MACLEAN: Objection, hearsay.

21 MR. BOYDSTON: Withdrawn.

22 JUDGE BARRETT: Thank you.

208

1 MR. BOYDSTON: Your Honor, I'd like to  
2 move that Exhibit 23 be entered into evidence.

3 MR. MACLEAN: No objection, Your  
4 Honor.

5 MS. PLOVNICK: Our only objection is  
6 the same objection we're going to renew for  
7 paragraph three, regarding the conflicting  
8 program claims appearing -- that haven't been  
9 listed or produced to us. Otherwise, no  
10 objection.

11 JUDGE BARRETT: Exhibit 23 is  
12 admitted.

13 (Whereupon, the above-referred to  
14 document was received into evidence as IPG  
15 Exhibit No. 23.)

16 MR. BOYDSTON: Thank you, Your Honor.  
17 Please take a look at what's been marked Exhibit  
18 24.

19 (Whereupon, the above-referred to  
20 document was marked as IPG Exhibit No. 24 for  
21 identification.)

22 THE WITNESS: Okay.

209

1 BY MR. BOYDSTON:

2 Q And are you familiar with that  
3 document?

4 A Yes, I am.

5 Q And it appears to be another Copyright  
6 Office printout from the website, and what is  
7 this regarding? What title and what owner?

8 A Right. This is for the television  
9 show Beast Wars. As I testified yesterday, it's  
10 owned by Mainframe Entertainment, which is an  
11 IPG-represented claimant.

12 Q And have you seen material in the MPAA  
13 materials that indicate that a broadcaster is  
14 making claim through the MPAA for this program?

15 A That's correct. Off the top of my  
16 head I can't recall exactly which one, but again  
17 this is based on the Excel spreadsheet that was  
18 produced to us, pursuant to the Judge's order,  
19 with an associated particular program with a  
20 particular claimant.

21 MR. BOYDSTON: Your Honor, I'd like to  
22 move Exhibit 24 be entered into evidence.

210

1 MS. PLOWNICK: No objection.

2 MR. MACLEAN: No objection.

3 JUDGE BARRETT: 24 is admitted.

4 (Whereupon, the above-referred to  
5 document was received into evidence as IPG  
6 Exhibit No. 24.)

7 MR. BOYDSTON: Thank you, Your Honor.  
8 Please take a look at what's been marked as  
9 Exhibit 25, and are you familiar with that  
10 document?

11 (Whereupon, the above-referred to  
12 document was marked as IPG Exhibit No. 25 for  
13 identification.)

14 THE WITNESS: Yes, but I want to bring  
15 to your attention that part of 25, I think, may  
16 have ended up at the end of the prior exhibit,  
17 because the prior exhibit, the first page is the  
18 copyright search for Beast Wars, and then the  
19 second page is also for Beast Wars. But they're  
20 two different copyright documents. The third  
21 page --

22 MR. BOYDSTON: May I approach, Your

211

1 Honor?

2 JUDGE BARRETT: You may.

3 (Pause.)

4 BY MR. BOYDSTON:

5 Q The last -- there should be two pages  
6 only in Exhibit 24. If you have a third, it  
7 indicates the David Letterman Show. That should  
8 be the first page 25. Again, my apologies. Mine  
9 is not like that, but that one was, so some may,  
10 some may not be.

11 Mr. Galaz, thank you for pointing that  
12 out. Do you have an understanding as to whether  
13 or not the title represented here on the first  
14 page, David Letterman, is that a television show?

15 A Yes, it's a television show.

16 Q And to your knowledge, who is it owned  
17 by?

18 A Worldwide Pants, consistent with our  
19 own agreements with Worldwide Pants.

20 Q And so IPG has had agreements with  
21 Worldwide Pants; correct?

22 A Correct, pursuant to which they've

212

1 attested to in their own spreadsheet. The Late  
2 Show with David Letterman and Late Late Show as  
3 well, which has had a variety of hosts.

4 Q And I see the second page is another  
5 Copyright printout that references the Late Late  
6 Show; correct?

7 A That's correct, and we presented this  
8 as sort of the Late Late Show as being with  
9 different hosts, Tom Snyder, Craig Kilborn. I  
10 can't recall who after that.

11 Q Have you seen --

12 A I think we're missing Craig Ferguson.

13 Q Have you seen in the MPAA materials  
14 information indicating that the broadcaster was  
15 making claim for these programs through the MPAA?

16 A Yes. In the MPAA materials, it  
17 indicates that CBS Broadcasting is being  
18 attributed ownership of all the Worldwide Pants  
19 programming, despite the fact -- well, our  
20 contract with Worldwide Pants expressly  
21 warranties that there has been no grant of those  
22 rights specifically to any broadcaster or

213

1 distributor.

2 MR. BOYDSTON: Your Honor, I'd like to

3 move Exhibit 25 be entered into evidence.

4 MS. PLOVNIK: No objection.

5 MR. MACLEAN: No objection.

6 JUDGE BARRETT: Exhibit 25 is

7 admitted.

8 (Whereupon, the above-referred to

9 document was received into evidence as IPG

10 Exhibit No. 25.)

11 THE WITNESS: And I apologize again.

12 I have a fourth page that's the last page of the

14 declaration by John Cosgrove of Cosgrove Meurer

14 Productions.

15 MR. BOYDSTON: Well no. The apology

16 is mine. May I approach, Your Honor?

17 JUDGE BARRETT: You may.

18 MR. BOYDSTON: Thank you.

19 (Pause.)

20 MR. BOYDSTON: At least in this

21 version, that is redundant and can be removed,

22 because it's properly in Exhibit 27, where it's

214

1 supposed to be. However, if your Exhibit 27

2 doesn't have a second page, it may be like that

3 version errantly being in 25.

4 MR. MACLEAN: Your Honor, my version

5 has three pages, and it appears to be as the

6 witness explained it.

7 JUDGE BARRETT: We're talking about

8 Exhibit 25 or 26?

9 MR. BOYDSTON: 25 and 27. In the

10 witness' binder, 25 had an extra page at the end,

11 which was a -- the second page of a declaration.

12 JUDGE BARRETT: Oh, okay.

13 MR. BOYDSTON: It appears that maybe

14 that was the only one messed up.

15 (Off mic comment.)

16 MR. BOYDSTON: May I continued, Your

17 Honor?

18 JUDGE BARRETT: You may.

19 MR. BOYDSTON: Please take a look at

20 what's been marked as Exhibit 26, and are you

21 familiar with that Copyright Office printout?

22 (Whereupon, the above-referred to

215

1 document was marked as IPG Exhibit No. 26 for

2 identification.)

3 THE WITNESS: All right, yes.

4 BY MR. BOYDSTON:

5 Q And what title does that relate to?

6 A Martha Stewart Living and other

7 titles. But for our purposes, it's Martha

8 Stewart Living that we're focusing on.

9 Q And do you know who owns Martha

10 Stewart Living, or who does this purport to say

11 owns Martha Stewart?

12 A Martha Stewart Living Omnimedia, Inc.

13 Q And does IPG have any relationship

14 with that entity?

15 A We represented them for calendar year

16 2000 exclusively.

17 Q And have you seen any information and

18 materials provided by the MPAA which indicate

19 that a broadcaster is making claim for this

20 program?

21 A CBS Broadcasting for the calendar year

22 2000, for which we're making claim on behalf of

216

1 Martha Stewart Living.

2 MR. BOYDSTON: Your Honor, I'd like to

3 move that Exhibit 26 be admitted.

4 MS. PLOVNIK: No objection.

5 MR. MACLEAN: No objection.

6 JUDGE BARRETT: Exhibit 26 is

7 admitted.

8 (Whereupon, the above-referred to

9 document was received into evidence as IPG

10 Exhibit No. 26.)

11 MR. BOYDSTON: Thank you, Your Honor.

12 Please take a look at what's been marked as

13 Exhibit 27.

14 (Whereupon, the above-referred to

15 document was marked as IPG Exhibit No. 27 for

16 identification.)

17 THE WITNESS: All right.

18 BY MR. BOYDSTON:

19 Q And that appears to be a declaration

20 by John Cosgrove?

21 A That's correct.

22 Q Are you familiar with Mr. Cosgrove?

217

1 A Yes.

2 Q And who does Mr. Cosgrove work for?

3 A Well, he's a principal of Cosgrove

4 Meurer Productions. Their claim to fame is

5 Unsolved Mysteries is a series that they produced

6 for several years.

7 Q And does IPG have a relationship with

8 Mr. Cosgrove's company?

9 A Yes. We represented them for several

10 years under a contract.

11 Q Have you seen materials in the -- or

12 information in the MPAA materials that indicate

13 that a broadcaster is making claim for this in

14 the programming?

15 A Yes, actually a variety of entities.

16 Allied Communications, Equator Films, Westside

17 Studios and I think CBS Broadcasting is also.

18 Q Did you bring that to Mr. Cosgrove's

19 attention?

20 A Yes, I did.

21 Q And did Mr. Cosgrove provide you with

22 this declaration?

218

1 A Yes.

2 MR. BOYDSTON: Your Honor, I'd like to

3 move that Exhibit 27 be admitted.

4 MS. PLOVNIK: No objection.

5 MR. MACLEAN: No objection.

6 JUDGE BARRETT: Exhibit 27 is

7 admitted.

8 (Whereupon, the above-referred to

9 document was received into evidence as IPG

10 Exhibit No. 27.)

11 MR. BOYDSTON: Thank you, Your Honor.

12 Please take a look at what's been marked Exhibit

13 28. That appears to be a declaration by Rodney

14 Jacobs. Are you familiar with Rodney Jacobs?

15 (Whereupon, the above-referred to

16 document was marked as IPG Exhibit No. 28 for

17 identification.)

18 THE WITNESS: Yes, I am.

19 BY MR. BOYDSTON:

20 Q And who does Rodney Jacobs work with

21 or for?

22 A He's a principal of Freewheelin' Films

219

1 and New Vision Syndication.

2 Q And is that entity -- does that entity

3 have a relationship with IPG?

4 JUDGE BARRETT: Hang on, excuse me.

5 Go ahead.

6 BY MR. BOYDSTON:

7 Q Does that entity have a relationship

8 with IPG?

9 A They're an IPG-represented client.

10 Q Have you seen materials in the MPAA

11 materials which indicate that a broadcaster is

12 making claim for that entity's programming?

13 A Yes, ABC, American Broadcasting

14 Company is attributed ownership of, let's see,

15 Inside the Ropes at the Open Championship, Inside

16 the Ropes plain, the Bob Hope Chrysler Classic,

17 Countdown to Daytona, Mountaintop Ski and

18 Snowboarding.

19 I'm sorry, I take that back. It's

20 only one of those. I think Inside the Ropes at

21 the Open Championship attributable to ABC

22 Broadcasting. The other programs I listed are

220

1 being attributed to the U.S. Ski and Snowboard

2 Association and PGA Tour, Inc.

3 Q Did you bring that to the attention of

4 Mr. Jacobs?

5 A Yes.

6 Q Did you discuss with him executing

7 this declaration?

8 A Yes, and we also -- I pointed -- I

9 offered a lot of materials, including the -- and

10 that's some of stuff attached to his declaration,

11 the warm sheets that get offered when they go to

12 television markets like NATPE or MIPCOM, that are

13 used to hand out two prospective licensees.

14 MR. BOYDSTON: Your Honor, I'd like to

15 move that Exhibit 28 be admitted.

16 MS. PLOVNIK: No objection.

17 MR. MACLEAN: No objection, sorry.

18 JUDGE BARRETT: Exhibit 28 is

19 admitted.

20 (Whereupon, the above-referred to

21 document was received into evidence as IPG

22 Exhibit No. 28.)

221

1 BY MR. BOYDSTON:

2 Q Thank you, Your Honor. Mr. Galaz, in  
3 the instances we've just been discussing, do you  
4 have an understanding as to whether or not a  
5 broadcaster did in fact broadcast these programs?

6 A In most circumstances, there was a  
7 network broadcaster that broadcast these. In  
8 other circumstances, it wasn't even met.

9 Q Let me ask you to pause. You say in  
10 other circumstances, there wasn't even that.  
11 Please make that a bit more specific.

12 A That was a circumstance, for instance,  
13 with Singstation. Singstation has always been a  
14 syndicated show for 25 years. It's not part of  
15 the CBS Network. Nonetheless, CBS was -- CBS  
16 Broadcasting was attributed ownership of  
17 Singstation for one or more years.

18 Q And when you say it was attributed,  
19 who was attributing that?

20 A In the Excel spreadsheet that was  
21 produced by the MPAA, that linked the programs  
22 that were being claimed with a particular

222

1 claimant, CBS Broadcasting was being attributed  
2 ownership of Singstation.

3 Q Are you aware --

4 MR. MACLEAN: Your Honor, there's been  
5 a lot of -- Mr. Galaz has given a lot of  
6 testimony about the contents of an MPAA  
7 spreadsheet. I'm going to at this point have to  
8 object on the basis of best evidence. I think  
9 it's a significant issue, and I'm not objecting  
10 on relevance. But I would like to see a  
11 spreadsheet, so that I have a better  
12 understanding of what he's referring to.

13 MR. BOYDSTON: Well, Your Honor, the  
14 spreadsheet was produced in discovery to all  
15 parties. So it's certainly within the SDC's  
16 possession. I don't think there's any mystery  
17 about it. Mr. Galaz is testifying as to what he  
18 saw there and his summation thereof.

19 I don't think we always need to put  
20 every gazillion page document into evidence  
21 necessarily. It's fair for a witness to say I  
22 read the gazillion pages. This is what I saw.

223

1 MR. MACLEAN: Your Honor, if it's a  
2 voluminous record, you know, I don't have the  
3 spreadsheet in front of me. If it's a voluminous  
4 record, then a summary of voluminous records is  
5 perfectly acceptable. But a witness ordinarily  
6 is not permitted to just testify about the  
7 contents of a document, without either having the  
8 document present or accounting for its absence.

9 MR. BOYDSTON: Well, I don't think  
10 that's a valid objection.

11 JUDGE BARRETT: We do not either have  
12 in front of us the spreadsheet, and there's no  
13 way we can cross-reference that spreadsheet is  
14 done, this 40 minutes of oral testimony.

15 MR. BOYDSTON: May I ask a question of  
16 the witness to clarify the base of his knowledge?

17 JUDGE BARRETT: You may.

18 BY MR. BOYDSTON:

19 Q Mr. Galaz, please give us the basis  
20 for the knowledge you've been expressing here for  
21 the last 40 minutes?

22 A Certainly it's by running searches of

224

1 that spreadsheet. To respond to one point that  
2 was made, it can't be summarized. It lists every  
3 program for every claimant for every year, and as  
4 I was indicating early on in my testimony,  
5 there's 44,000 of those.

6 JUDGE STRICKLER: I know it couldn't  
7 be -- you say it couldn't be summarized, but it  
8 could be excerpted, couldn't it, to identify the  
9 lines that you are testifying to.

10 THE WITNESS: It could be excerpted,  
11 where I could print out and format it, in order  
12 to actually put on a sheet. But it would have to  
13 be formatted to then, and I guess falling to that  
14 particular sheet to show that, and we could do  
15 that.

16 JUDGE STRICKLER: But you didn't do  
17 it?

18 THE WITNESS: I didn't think it was  
19 necessary.

20 JUDGE STRICKLER: How many lines will  
21 you be required to excerpt and manipulate  
22 computer-wise in that manner?



225

1 THE WITNESS: Well, the document  
2 itself, as I was indicating, has 44,000 and I  
3 guess divided by 50, however many pages that  
4 would be that we would be going through and  
5 printing out whatever pages were being addressed,  
6 particularly by these particular challenges.

7 JUDGE STRICKLER: Well the challenge  
8 -- I'm sorry.

9 JUDGE BARRETT: Go ahead.

10 JUDGE STRICKLER: The challenges  
11 you're referring to are all the ones that you've  
12 just testified to, right?

13 THE WITNESS: That's correct.

14 JUDGE STRICKLER: So how many? I  
15 wasn't keeping count. How many are we talking  
16 about, ballpark?

17 MR. BOYDSTON: I'd say ballpark.

18 JUDGE STRICKLER: Okay. So you would  
19 need to excerpt from this voluminous Excel  
20 spreadsheet?

21 THE WITNESS: Yeah, or we could  
22 produce it, I suppose, if the Judges would

227

1 Q Yes, Your Honor. Mr. Galaz, can you  
2 identify the spreadsheet?

3 A If I could actually get up and pull  
4 something on my desktop, I can actually give you  
5 the description of how it was provided to us  
6 electronically.

7 MR. BOYDSTON: Your Honor I --

8 JUDGE BARRETT: Just do you know  
9 whether it is -- it was produced to you as a  
10 discovery response, or if it was copied to you  
11 because it was provided to the Judges?

12 THE WITNESS: It was produced in  
13 discovery pursuant to the Judge's July 30, 2014  
14 order.

15 JUDGE BARRETT: Thank you.

16 MR. BOYDSTON: I observe its 2:31.  
17 Theoretically we could do this on a break.

18 JUDGE BARRETT: Well then keep going,  
19 because we're going til 4:30. Let's not break  
20 this early in the afternoon. During the break,  
21 if you want to do a little more digging, Mr.  
22 Boydston, you may.

226

1 prefer, because maybe it would enlighten them  
2 about, that we could simply give them what was  
3 provided to us, which is a single program -- not  
4 a single program. A single file that can be  
5 opened in Excel. It has multiple tabs, 2000,  
6 2001, 2002 and all the information that I've  
7 described previously.

8 JUDGE BARRETT: May I ask if we can  
9 identify the spreadsheet? The Judges did request  
10 a spreadsheet with specifics about claims. There  
11 might have been there spreadsheets that are  
12 involved here.

13 I mean we're discussing a spreadsheet,  
14 and I think spreadsheets have been, you know,  
15 lousy in this or this proceeding has been lousy  
16 with spreadsheets. So let's ask the witness  
17 which spreadsheet. We might have it.

18 MR. BOYDSTON: I will, Your Honor.

19 JUDGE BARRETT: It doesn't make it any  
20 easier for us to peruse it or to find what Mr.  
21 Galaz is testifying about, but we might have it.

22 BY MR. BOYDSTON:

228

1 MR. BOYDSTON: Thank you, Your Honor.

2 JUDGE BARRETT: Ms. Plovnick, I'm  
3 sorry. I beg your indulgence. Is the O in your  
4 name a long O or a short O?

5 MS. PLOVNICK: Just Plov-nick.

6 JUDGE BARRETT: Plovnick, thank you.  
7 Ms. Plovnick.

8 MS. PLOVNICK: Yeah. I was just going  
9 to say, the particular discovery production, the  
10 cover letter showing where it was produced was  
11 MPAA Exhibit 333, which was already produced, and  
12 has the name of the file and the date we produced  
13 it in discovery.

14 JUDGE BARRETT: Okay, thank you. But  
15 that doesn't mean the Judges have it.

16 MS. PLOVNICK: I know, Your Honor.  
17 But just for purposes of clarifying, I think that  
18 is not the file that --

19 JUDGE STRICKLER: Thank for that. We  
20 have a rule, 351.10(c)(3) about summary exhibits,  
21 and it says in part "The contents of voluminous  
22 writings, recordings or photographs which cannot

229

1 conveniently be examined in the hearing, may be  
2 presented in the form of a chart, summary or  
3 calculation."

4 The witness sounds like he's done a  
5 summary of the excerpts that he's been talking  
6 about, and the rule goes on and says "The  
7 originals or duplicates shall be made available  
8 for examination or copying or both by other  
9 parties at a reasonable time and place."

10 Now in this particular case, the  
11 documents in question, the Excel spreadsheet, is  
12 something that you provided in discovery.

13 MS. PLOVNIK: Yes, Your Honor.

14 JUDGE STRICKLER: Do you have access  
15 to it electronically now?

16 THE WITNESS: I do, Your Honor.

17 JUDGE STRICKLER: Well, let me just  
18 have her answer.

19 MS. PLOVNIK: I mean we could obtain  
20 a copy. We have one laptop here. I did not  
21 bring a disk or anything with it on with me.  
22 However, our offices are in D.C. We could obtain

230

1 a copy. We might be able to pull it up on our  
2 laptop.

3 JUDGE STRICKLER: I think we're going  
4 to have to talk about this during the break  
5 amongst ourselves. But my point was not  
6 necessarily that we need to see it.

7 But the point, as it relates generally  
8 to summary exhibits or in this case, apparently  
9 summary testimony, to the extent that's  
10 sufficient, is that you have an opportunity to  
11 cross-examine, to determine whether or not the  
12 summaries, excerpted summary can be attacked or  
13 impeached in any way, by having the underlying  
14 document.

15 Since they're your underlying  
16 documents and you have access to them --

17 MS. PLOVNIK: Yes, Your Honor, and we  
18 --

19 JUDGE STRICKLER: Let me just finish  
20 it up. You're not necessarily hamstrung by the  
21 witness' testimony about this, summarizing  
22 excerpts, because you have the whole thing within

231

1 your own files.

2 MS. PLOVNIK: This wasn't our  
3 objection.

4 (Laughter.)

5 MS. PLOVNIK: We do have it, yes Your  
6 Honor, and we did produce it, and I believe we  
7 produced it to SDC.

8 JUDGE STRICKLER: I'm advised that it  
9 was not your objection. So let me direct the  
10 line of questioning, then, to Mr. MacLean. Mr.  
11 MacLean, you can do the same, right?

12 MR. MACLEAN: Your Honor, it was my  
13 objection. I did not mean to sidetrack the  
14 proceedings.

15 (Simultaneous speaking.)

16 MR. MACLEAN: And at this point, I  
17 will withdraw the objection.

18 JUDGE BARRETT: Thank you. Go ahead,  
19 Mr. Boydston.

20 MR. BOYDSTON: Has Exhibit 28 been  
21 admitted? That was a long way back to where we  
22 started.

232

1 JUDGE BARRETT: Exhibit 28 is  
2 admitted.

3 MR. BOYDSTON: Thank you, Your Honor.  
4 Let me ask you to take a look at  
5 Exhibit 29.

6 MR. GALAZ: All right.

7 BY MR. BOYDSTON:

8 Q And Exhibit 29 appears to be -- it's  
9 entitled Notice Regarding Programing of  
10 Watercourse Road Productions. And it is  
11 essentially a testimonial by Tom Moyer.

12 Are you familiar with Mr. Moyer?

13 A Very well.

14 Q And are you familiar with Watercourse  
15 Road Productions?

16 A Very well.

17 Q And is there a relationship between  
18 those two?

19 A Tom Moyer is the principal of  
20 Watercourse Road Productions. This document was  
21 actually filed in the 2000 and 2003 proceedings  
22 at the request of Mr. Moyer who was if the Judges

233

1 may recall going to be one of the witnesses at  
2 the final distribution hearing.

3 But ultimately his testimony was  
4 disallowed.

5 Q And does IPG have a relationship with  
6 Watercourse Road Productions?

7 A They've been a long time IPG  
8 represented claimant.

9 Q Are you aware of what programming  
10 Watercourse Road Productions owns?

11 A It has a single program entitled  
12 Critter Gitters that has been on air since I  
14 think 1998 through the better part of the first  
14 decade of you know, 2003, 2010 I believe.

15 Q And did Litton and IPG ever have a  
16 contractual relationship?

17 A Litton Syndications was also  
18 represented by IPG. And it was also I think,  
19 perhaps the second or third client that we ever  
20 had.

21 Q And when IPG entered into an agreement  
22 with Litton, did IPG obtain from Litton details

235

1 we were just looking at that ultimately got  
2 banned from the record. And which he was very  
3 animated about.

4 Q Well I think it's obvious to me why it  
5 raised his ire. But perhaps did he explain --

6 MR. MacLEAN: Objection.

7 MR. BOYDSTON: I haven't gotten it out  
8 yet.

9 Did he explain to you what raised his  
10 ire?

11 MR. GALAZ: Yes.

12 MR. MacLEAN: Move to strike what is  
13 obviously Mr. Boydston's.

14 MR. BOYDSTON: Fair enough,  
15 stipulated.

16 Did he explain that?

17 MR. GALAZ: Yes. He indicated as is  
18 consistent with the agreement that IPG had  
19 entered into with Litton Syndications that Litton  
20 only had a relationship with him for a brief  
21 period of time. I think he said that they were  
22 distributor for one year. And consistent

234

1 about what program Litton owned or didn't own?

2 A Yes.

3 Q Or was -- had rights to?

4 A Yes. The contract that was entered  
5 into between IPG and Litton had some specified  
6 which program they had at that point in time.  
7 And Critter Gitters was one of them.

8 Q And for what years did Litton have the  
9 rights to Critter Gitters?

10 A Allow me to refresh my recollection.  
11 The contract between IPG and Litton, Litton  
12 specifically specified that it only had rights  
13 through June 1999.

14 Q Now in review of the MPAA documents,  
15 and the spreadsheet et cetera, have you seen any  
16 indication of any entities making claim for the  
17 program Critter Gitters?

18 A Critter Gitters is attributed for each  
19 and all years to Litton Syndications. And that  
20 was actually the case also in 2000 and 2003  
21 proceedings, which is what raised the ire of Mr.  
22 Moyer and resulted in him preparing the document

236

1 therewith that their rights concluded in June  
2 1999.

3 Subsequent to that Mr. Moyer and  
4 Watercourse Road Productions was a -- they self-  
5 distributed the program Critter Gitters. And  
6 they're the owner, they're the distributor,  
7 there's literally no one else in the chain of  
8 title or having anything else to do with it.

9 So when they discovered that in the  
10 2000 and 2003 proceeds that it was being claimed  
11 on behalf of Litton, and continues to be  
12 attributed to Litton and claimed by Litton in  
13 these proceedings, throughout these proceedings,  
14 he's obviously upset.

15 BY MR. BOYDSTON:

16 Q Now once again, you said that IPG had  
17 an agreement with Critter Gitters for one year,  
18 '98, '99 I think you said one of those. And  
19 Critter Gitters was properly being credited to  
20 Litton at that time, correct?

21 A You misspoke. What we had, an  
22 agreement with Litton Syndications. The

237

1 agreement with Litton Syndications reflects on  
2 the face of the document that their rights to  
3 Critter Gitters expire in June 1999.

4 Q And yet what you've seen in the MPAA  
5 information is that despite that for these years  
6 since then, they continue to receive the credit.

7 A Every year.

8 Q And that's why Mr. Moyer is miffed?

9 A Correct.

10 MR. BOYDSTON: Your Honor, I'd like to  
11 move Exhibit 29 be entered into evidence.

12 MS. PLOVNIK: I have an objection  
13 Your Honor. The bottom of the first page of IPG  
14 Exhibit 29, there is a legal conclusion at the  
15 bottom of that page and the sentence continuing  
16 over to the following page.

17 So we think that this is improper  
18 opinion testimony by a fact witness that isn't  
19 present.

20 MR. BOYDSTON: I think I stipulated to  
21 that. You're referring to the underscored  
22 portion?

239

1 A Yes I am. This is the agreement that  
2 I was just referring to in my testimony, the  
3 original agreement between Worldwide Subsidy  
4 Group and Litton Syndications.

5 And the specific aspect that I was  
6 referring to is the last page of it which  
7 identifies the schedule of programs for which  
8 Litton was making claim. Is, if you see the next  
9 to last one, it indicates Critter Gitters until  
10 June 15, 1999.

11 MR. BOYDSTON: Your Honor, I'd like to  
12 move that Exhibit 30 be admitted.

13 MS. PLOVNIK: We have no objection.

14 MR. MacLEAN: No objection, Your  
15 Honor.

16 JUDGE BARRETT: Exhibit 30 is  
17 admitted.

18 (Whereupon, the above-referred to  
19 document was received into  
20 evidence as IPG Exhibit No. 30.)

21 MR. BOYDSTON: Thank you, Your Honor.  
22 Please take a look at what's been

238

1 MS. PLOVNIK: Yes.

2 MR. BOYDSTON: I would stipulate that  
3 that be stricken.

4 JUDGE BARRETT: Okay.

5 MR. BOYDSTON: Is it admitted  
6 otherwise?

7 JUDGE BARRETT: Yes. Exhibit 29 is  
8 admitted with the last sentence on the first page  
9 carrying over to the second page. Actually the  
10 first clause of the last sentence, beginning on  
11 the bottom of the first page carrying over to the  
12 top of the second page stricken.

13 (Whereupon, the above-referred to  
14 document was received into  
15 evidence as IPG Exhibit No. 29.)

16 MR. BOYDSTON: Thank you, Your Honor.

17 Mr. Galaz, please take a look at  
18 what's been marked as Exhibit 30.

19 MR. GALAZ: All right.

20 BY MR. BOYDSTON:

21 Q And tell me, are you familiar with  
22 that document?

240

1 marked as Exhibit 31.

2 MR. GALAZ: All right.

3 BY MR. BOYDSTON:

4 Q And are you familiar with that  
5 document?

6 A Yes I am.

7 Q It purports to be the declaration of  
8 Steven Hoyt of an entity called Global Response.  
9 Are you familiar with Mr. Hoyt and Global  
10 Response?

11 A Yes I am.

12 Q Is Global Response -- does Global  
13 Response have a relationship with IPG?

14 A Yes, as -- I think most of these  
15 declarations are predicated on that, it's  
16 referenced in his paragraph three.

17 Q And are you familiar with programming  
18 for Global Response, LLC?

19 A Yes. They only had a single program,  
20 Jaw Droppers.

21 Q And at some point did you see  
22 information in the MPAA materials that indicated

241

1 that an entity other than Global Response was  
 2 being credited with Jaw Droppers?  
 3 A Yes.  
 4 Q And what was that?  
 5 A Hawthorne Communications.  
 6 Q And did you bring that to the  
 7 attention of Mr. Hoyt?  
 8 A Yes.  
 9 Q And did he confirm that that was the  
 10 case or disagree?  
 11 A He confirmed that ownership has always  
 12 been with Global Response, LLC. He was actually  
 13 familiar with Hawthorne Communications and  
 14 indicated that they'd been hired to render  
 15 production services in connection with the  
 16 production of the infomercial Jaw Droppers.  
 17 But that was the only basis of their  
 18 communication -- the only basis of their  
 19 involvement.  
 20 MR. BOYDSTON: Your Honor, I'd like to  
 21 move to admit Exhibit 31.  
 22 MS. PLOVNICK: No objection.

242

1 MR. MacLEAN: No objection.  
 2 JUDGE BARRETT: Exhibit 31 is  
 3 admitted.  
 4 (Whereupon, the above-referred to  
 5 document was received into  
 6 evidence as IPG Exhibit No. 31.)  
 7 MR. BOYDSTON: Thank you, Your Honor.  
 8 Please take a look at what's been  
 9 marked as Exhibit 32, which purports to be a  
 10 declaration by Maureen Millen. And are you  
 11 familiar with this document? Strike that.  
 12 Are you familiar with Maureen Millen?  
 13 MR. GALAZ: Yes. Very familiar with  
 14 Ms. Millen.  
 15 BY MR. BOYDSTON:  
 16 Q And I believe her company is IWV, is  
 17 that correct.  
 18 A She's got several companies. IWV  
 19 Media Group is one of them.  
 20 Q And is IWV Media Group an IPG  
 21 claimant?  
 22 A Yes. We've represented IWV for

243

1 several years as her other companies as well.  
 2 Q And at some point did you come to the  
 3 conclusion from looking at the MPAA materials  
 4 that some entity other than IWV Media Group was  
 5 making claim to IWV Media Group programming?  
 6 A Yes.  
 7 Q And what was that?  
 8 A Specifically the program Healthy  
 9 Living was being attributed to Transworld  
 10 International.  
 11 Q Did you bring that to Ms. Millen's  
 12 attention?  
 13 A Yes.  
 14 Q And did she affirm or deny that?  
 15 A She affirmed that Healthy Living was  
 16 --  
 17 MR. MacLEAN: Objection. Hearsay.  
 18 JUDGE BARRETT: Is this information in  
 19 the declaration?  
 20 MR. BOYDSTON: I believe so.  
 21 JUDGE BARRETT: Okay.  
 22 MR. BOYDSTON: Let me ask. I believe

244

1 that information is consistent with the  
 2 declaration, is that correct?  
 3 MR. GALAZ: Yes. Yes.  
 4 MR. BOYDSTON: Your Honor, may I move  
 5 to admit Exhibit 32?  
 6 JUDGE BARRETT: The objection is  
 7 sustained. Ms. --  
 8 MS. PLOVNICK: I have an additional  
 9 objection. And this is regarding the numbered  
 10 paragraph three. She makes a reference to having  
 11 reviewed the competing program claim information.  
 12 And that's not attached.  
 13 And it's also, I raise it specifically  
 14 with regard to this entity because I think as  
 15 you'll see later, there's some confusion over the  
 16 names of these titles and whether or not what is  
 17 being you know, MPAA attributed to Transworld is  
 18 in fact the same program that IWV Media Group is  
 19 claiming.  
 20 And so we don't know exactly what she  
 21 reviewed to come to the conclusion that it was  
 22 her program. So this is incomplete. And we'd

245

1 object on that basis.

2 MR. BOYDSTON: Your Honor, may I ask  
3 some questions and lay that further foundation?

4 JUDGE BARRETT: You may.

5 BY MR. BOYDSTON:

6 Q Did you provide Ms. Millen with any  
7 materials when you discussed this other entity  
8 with her?

9 A Yes I did.

10 Q And what did you provide her?

11 A It was in fact excerpts from the Excel  
12 spreadsheet that had been provided to us by the  
13 Motion Picture Association of America. It  
14 indicated that Transworld International was  
15 making claim not just for Healthy Leaving, but  
16 for Healthy Leaving Parenting and Beyond, which I  
17 would argue is not an IWV Media Group Production,  
18 but Five Star Productions, another IPG  
19 represented claimant.

20 But then they were also making claim  
21 for the Healthy Living series that is owned by  
22 IWV Media Group.

247

1 particular party, the Excel spreadsheet was  
2 produced by the MPAA to all parties.

3 MS. PLOVNICK: Your Honor, just for a  
4 point of clarification, this declaration is dated  
5 October 13, 2014. But MPAA's written rebuttal  
6 statement was filed on October 15, 2014.

7 So this, I think was in IPG's written  
8 rebuttal statement, not responding to MPAA's.

9 MR. MacLEAN: And Your Honor, I want  
10 to point out first of all, the parties have  
11 continuing discovery obligations. The date when  
12 this excerpt was produced or was generated, is  
13 irrelevant to the question of whether it should  
14 have been produced.

15 Secondly, my objection is not only a  
16 discovery objection, it's an evidentiary  
17 objection, best evidence. We should -- if  
18 there's going to be testimony about a summary of  
19 voluminous documents that summary should be in  
20 front of us so that the parties can read it.

21 I don't read the Judge's rules  
22 regarding summaries of voluminous records as

246

1 MR. MacLEAN: Your Honor, at this  
2 point I am going to renew my objection based on  
3 best evidence. That excerpt was not provided to  
4 us in discovery and it should have been.

5 MR. BOYDSTON: May I ask when the  
6 excerpt was obtained? I don't think it was  
7 consistent with the discovery production. But I  
8 may ask questions to establish a foundation.

9 JUDGE BARRETT: Yes.

10 BY MR. BOYDSTON:

11 Q The date -- I know that the date of  
12 this declaration is October 13, 2014. Do you  
13 recall roughly at what point in time you provided  
14 Ms. Millen with the materials you just described?

15 A Yes. It was approximate to the  
16 declaration. And it was only in response to the  
17 issues that were raised by the MPAA rebuttal.

18 As I indicated, it was information to  
19 confirm the MPAA produced Excel spreadsheet that  
20 came mid-August following the Judge's July 30  
21 Order. And the -- while the excerpt wasn't --  
22 that page wasn't printed out and given to any

248

1 meaning a witness can just orally testify about  
2 the contents of voluminous documents. I read it  
3 to say that the summary itself will be the  
4 document.

5 And it's not a substitute. It's not  
6 to allow witnesses to simply testify. We need  
7 that summary. The summary that these witnesses  
8 are testifying to.

9 MR. BOYDSTON: Your Honor -- oh, I'm  
10 sorry.

11 MS. PLOVNICK: I was just going to  
12 say. We certainly have the whole spreadsheet.  
13 So, and I think maybe -- that's not a question.  
14 We just don't know what Ms. Millen reviewed.

15 I think that's my objection. Is that  
16 I don't know what was shown to Ms. Millen. I  
17 know what the whole 44 -- the whole record looks  
18 like, but I don't know what she saw.

19 JUDGE STRICKLER: I think that  
20 objection is well placed. But she does say in  
21 paragraph four of her certification, she does  
22 have this to say, identifies two particular

249

1 series, Healthy Living and Healthy Living  
2 Mysteries of the Mind.

3 Now she claims that she's been shown  
4 or sees a conflict between different documents as  
5 to who is entitled to make the claim on her  
6 company's behalf. There is no information in  
7 there to tell us what she relied on.

8 So it may well be the case that IPG  
9 has to prove that they -- or assert that there  
10 was a conflict. And then you can rebut that as  
11 to whether there indeed was a conflict.

12 But her self-serving statement without  
13 more, will be given whatever weight we can give  
14 it in the absence of anything to corroborate it.  
15 But it may be it's not a question of best  
16 evidence, it's more a question of other -- there  
17 is other evidence that supports or does not  
18 support the allegation of a conflict.

19 MR. MacLEAN: Well, Your Honor, I do  
20 think it's a question of best evidence because  
21 she is testifying to the contents of whatever it  
22 was she was provided. I recognize that there are

250

1 statements in this declaration that do not  
2 testify to the contents of the document.

3 My objection is addressed particularly  
4 to paragraph three and five of the declaration.  
5 I will also say I cannot quite make out what  
6 paragraph six says in my copy. But at any rate,  
7 I object to paragraphs three and five and we move  
8 to strike.

9 MR. BOYDSTON: Why five? I understand  
10 three. I don't see anything in five that refers  
11 to the other materials.

12 MR. MacLEAN: The first -- well, I  
13 would say I would move to strike the first  
14 sentence of paragraph five, which at least in  
15 context appears to me to be based on something  
16 she saw in a summary that was produce to her,  
17 that was saw by her.

18 MR. BOYDSTON: Well, there's also  
19 evidence that it was explained to her. It was  
20 told to her.

21 JUDGE BARRETT: Excuse me. She named  
22 two programs and then she said royalties

251

1 attributable to each of the foregoing series. I  
2 take that as a direct reference to the preceding  
3 paragraph.

4 And you know, I could be wrong. We  
5 can only look at what we have. We can only  
6 interpret it and give it whatever weight is  
7 appropriate under the circumstances.

8 So Exhibit 32 is admitted and the  
9 Judges will weigh it and determine whether it has  
10 value or not. Probative value.

11 (Whereupon, the above-referred to  
12 document was received into  
13 evidence as IPG Exhibit No. 32.)

14 MR. BOYDSTON: Thank you, Your Honor.

15 Please take a look at what's been  
16 marked as Exhibit 33. It purports to be a  
17 declaration by Jonathan Plowman of Questar.

18 MR. GALAZ: Questar.

19 BY MR. BOYDSTON:

20 Q Are you familiar with this person and  
21 entity?

22 A Yes I am.

252

1 Q And is Questar a claimant, an IPG  
2 claimant?

3 A Yes. They have been for -- Questar  
4 has been an IPG represented claimant for several  
5 years.

6 Q And what programming do they own as  
7 far as has been explained to you?

8 A They have an extensive array of  
9 programming. The one that's at issue for  
10 purposes of this proceeding was just the program  
11 It's a Miracle. Which was being claimed  
12 according to again, the spreadsheet that was  
13 given to us by the MPAA, by DTG Communications.

14 Q And did you bring that to the  
15 attention of Mr. Plowman?

16 A Yes. And in response thereto he  
17 prepared this declaration for me.

18 MR. BOYDSTON: Your Honor, I'd like to  
19 move that Exhibit 33 be admitted.

20 MS. PLOWNICK: Your Honor, I have two  
21 objections. One is just to renew my objection to  
22 paragraph three. It's the exact same language.

253

1 It's the same objection.

2 And then I also further object that  
3 this document is not dated and therefore it is  
4 incomplete and unclear.

5 MR. BOYDSTON: Well, Your Honor, it is  
6 undated, but it's clear it was made sometime in  
7 October 2014. And I'm not sure if lack of a more  
8 specific date is of any consequence. But you can  
9 put that into the weight I suppose.

10 MR. MacLEAN: Your Honor, may I have  
11 a word here.

12 JUDGE BARRETT: You may.

13 CROSS EXAMINATION

14 BY MR. MACLEAN:

15 Q Mr. Galaz I believe you just said this  
16 declaration was prepared by Mr. Plowman?

17 A After speaking with him, the form was  
18 sent to him for his review and revision to the  
19 extent it was necessary.

20 Q Okay, you used the passive voice  
21 there. A form was prepared for him?

22 A With each of these, we followed a

254

1 certain form. Parties don't necessarily know how  
2 to prepare a declaration and what needs to be in  
3 a declaration.

4 So we would prepare the declaration  
5 for them with the necessary language. And submit  
6 that to them.

7 Q And you mean you would prepare?

8 A I did, personally, yes.

9 Q You did personally?

10 A I did personally.

11 Q Okay. And when you say a form, you  
12 mean you put the caption on the top, the word  
13 declaration, signature line on the bottom?

14 A It would be actually the caption, I  
15 think what I gave to parties would say I blank,  
16 swear under penalty of perjury the following is  
17 true and correct. I know that I would never know  
18 who was going to -- I would have the date October  
19 blank because it was during October.

20 I wouldn't know who necessarily was  
21 going to be executing it. Some of the parties  
22 revised their's to type in their name rather than

255

1 have a printed name. They just simply typed it  
2 in themselves. They would make revisions to the  
3 form themselves.

4 Q And the remainder of the content of  
5 the declaration, would you provide as part of the  
6 draft that you created?

7 A I'm sure paragraph one was part of the  
8 form. Paragraph two, probably started off, I am  
9 an authorized representative of blank. And then  
10 the rest was all subject to the conversations  
11 that we had with the particular party that we  
12 were asking to execute a declaration.

13 Q And the rest would be drafted by you  
14 at least initially?

15 A In some cases yes. In some cases no.

16 Q Okay well, we're talking specifically.

17 MR. BOYDSTON: Your Honor, I believe  
18 that we are under the clock here and we're trying  
19 to get out of here by Thursday, tomorrow. And I  
20 think you've voir dired the heck out of this  
21 issue.

22 MR. MacLEAN: We're talking about IPG

256

1 33 was this one. Was the content of this  
2 declaration drafted by you?

3 MR. GALAZ: I don't recall. I don't  
4 recall if I did it following a conversation with  
5 him or then sent it to Questar and had them fill  
6 it in. I just don't recall.

7 MR. MacLEAN: No objection to this  
8 Exhibit, Your Honor.

9 JUDGE BARRETT: Exhibit 33 is  
10 admitted.

11 (Whereupon, the above-referred to  
12 document was received into  
13 evidence as IPG Exhibit No. 33.)

14 MR. BOYDSTON: Thank you, Your Honor.

15 Mr. Galaz, obviously what we've just  
16 seen are a number of IPG represented claimants  
17 for whom their programs are being claimed by the  
18 MPAA through a broadcaster or another entity.  
19 Have you done a calculation as to how many, not  
20 just the ones we've discussed, but how many total  
21 you found like that?

22 MR. GALAZ: We found -- I mean the



257

1 calculations that we put in is that I think of  
2 our group of represented claimants 98 of them  
3 have one or more of their claimed programs also  
4 being claimed by the MPAA. I'm refreshing my  
5 recollection by looking at my declaration of  
6 those, there's 1,872 program year combinations.

7 And of that 1,872, 761 of them are  
8 being attributed to entities for which there is  
9 literally no paper between the purported  
10 copyright owner and the MPAA. Not an  
11 identification of titles, not a contract, not an  
12 item of correspondence. Literally nothing.

13 That's one calculation that's been  
14 done. With regard to the other calculations that  
15 you were asking me about, it's almost too  
16 difficult to do.

17 When you go through this and you start  
18 seeing the number of circumstances in which a  
19 program is being attributed to some that you just  
20 know is not correct. And we attempted to present  
21 exemplars so to speak. Because we couldn't get  
22 to all of them.

258

1 If we were going to all of them,  
2 literally you know, with focusing on copyright  
3 registrations and this and that, it would have, I  
4 mean it could take a year.

5 BY MR. BOYDSTON:

6 Q Thank you. Now at some point in time  
7 IPG and Fintage Publishing -- well, strike that.

8 At some point in time did IPG and  
9 Fintage Publishing have an agreement with each  
10 other?

11 A Yes. We were representing their U.S.  
12 interest and they were representing -- we were  
13 representing their North American interest and  
14 they were representing our interests in Europe.

15 Q In that regard did IPG and Fintage  
16 jointly enter into contracts with certain  
17 programmers?

18 A Yes.

19 Q Were some of those programmers Spanish  
20 language programmers?

21 A Yes.

22 Q Do you recall any of them?

259

1 A Two in particular. TV Azteca and  
2 Televisa. They were in fact clients that were  
3 secured by me following my visit to their offices  
4 in Mexico City.

5 Q Let me ask you to take a look at  
6 what's been marked as Exhibit 34. Do you  
7 recognize that document?

8 A Yes. It was the contract that was  
9 entered into between the joint venture of Fintage  
10 WSG and Televisa.

11 Q And --

12 A And you can see my signature on, I  
13 believe the third page.

14 MR. BOYDSTON: Your Honor, I'd like to  
15 move that Exhibit 34 be admitted.

16 MS. PLOVNICK: No objection.

17 MR. MacLEAN: No objection.

18 JUDGE BARRETT: Exhibit 34 is  
19 admitted.

20 (Whereupon, the above-referred to  
21 document was received into  
22 evidence as IPG Exhibit No. 34.)

260

1 MR. BOYDSTON: Thank you, Your Honor.  
2 Now at some point did those entities  
3 -- excuse me, before I do that. Please take a  
4 look at what's been marked as Exhibit 35 and tell  
5 me if you recognize that?

6 MR. GALAZ: That was the agreement  
7 entered into between the joint venture of Fintage  
8 WSG and TV Azteca.

9 MR. BOYDSTON: Now at some point were  
10 these two -- oh, I'm sorry, Your Honor, I move to  
11 admit Exhibit 35.

12 MS. PLOVNICK: No objection.

13 MR. MacLEAN: No objection.

14 JUDGE BARRETT: 35?

15 MR. BOYDSTON: At some point in time  
16 were these agreements terminated?

17 JUDGE BARRETT: I'm sorry, did -- we  
18 were looking at 34 and you asked for admission of  
19 35?

20 MR. BOYDSTON: I did, I'm sorry, Your  
21 Honor, I --

22 JUDGE BARRETT: 34 was admitted.

261

1 MR. BOYDSTON: Yes. I was asking for  
2 the admission of 35.

3 JUDGE BARRETT: Okay. And there's no  
4 objection to that as well?

5 MS. PLOVNICK: No.

6 JUDGE BARRETT: Okay. 35 is admitted.  
7 (Whereupon, the above-referred to  
8 document was received into  
9 evidence as IPG Exhibit No. 35.)

10 BY MR. BOYDSTON:

11 Q At some point in time -- are you aware  
12 as to whether or not at some point in time these  
13 two contracts were terminated?

14 A Yes.

15 Q And when did that happen?

16 A It was I recall, following my  
17 incarceration. I can actually picture the  
18 letters sitting on my desk. And a little  
19 background is we had parted ways with Fintage at  
20 some point in I believe 2002/2003.

21 And had agreed that the benefits of  
22 this contract could be continued to be held by

263

1 Q Now during the time that Fintage and  
2 IPG were working together, did it enter into any  
3 agreements with EGEDA?

4 A We also entered into an agreement with  
5 EGEDA.

6 Q And did EGEDA -- what was the nature  
7 of that and what did EGEDA do?

8 A Well, it was -- it was similar to the  
9 extent that we were going to represent EGEDA to  
10 the extent that they had any right -- to the  
11 extent that they had any rights outside of the  
12 United States as an agent, we were going to  
13 represent those interests.

14 Q Going back to Televisa SA and TV  
15 Azteca, you explained that you got termi -- you  
16 got a notice of termination in 2006 or 2007. In  
17 reviewing the MPAA materials that you were  
18 provided with, did you see any indication or any  
19 evidence that Fintage was being accorded the  
20 right to collect royalties on behalf of Televisa  
21 SA and TV Azteca?

22 A Yes I did. The evidence that was

262

1 Fintage. We basically wanted a divorce. And  
2 said we're going to take these and you can take  
3 those. And that was the agreement.

4 Nonetheless, I received a notice of  
5 termination of this. And why it caught my  
6 attention so much was that one of them was very,  
7 very harshly worded. And this was probably a  
8 long time, a couple of years after we had already  
9 separated ways with Fintage.

10 Nonetheless, we had received the  
11 termination notice along with Fintage.

12 Q Do you remember approximately when  
13 that was?

14 A I was trying to narrow it down before  
15 because I can actually recall seeing it on my  
16 desk in a house that I was living in in 2006 to  
17 2007. So I know at that point, by that point, it  
18 had already been in and it might have been  
19 sometime earlier than that.

20 The only clear date that I had in my  
21 mind is that it was -- that it post-dated my  
22 incarceration by a year or two.

264

1 produced in discovery was that the programming  
2 claimed by Televisa and TV -- or I should say  
3 accorded to Televisa and TV Azteca was being  
4 claimed by Fintage.

5 TV Azteca and Televisa of course don't  
6 have contracts with the MPAA. Fintage has a  
7 contract with the MPAA. No termination notices  
8 were provided even though I know that they exist.

9 And quite frankly, I would have them,  
10 but for the fact that we no longer represented  
11 Televisa and TV Azteca, and I saw no reason to  
12 keep them. However, I recall them. And the one  
13 that I told you about that I recall in particular  
14 was with Televisa, because it was very, very  
15 harshly worded.

16 Q Now, getting over to --

17 JUDGE BARRETT: Mr. Boydston, I'm  
18 sorry. We're going to take a break at this time.

19 MR. BOYDSTON: Okay. Just for  
20 everyone's planning, I have just -- not that I  
21 want to keep going. I just have a couple of  
22 questions left and then I will be done with Mr.

265

1 Galaz.  
2 JUDGE BARRETT: Thank you. 15  
3 minutes.  
4 (Whereupon, the above-entitled matter  
5 went off the record at 3:02 p.m. and  
6 resumed at 3:22 p.m.)  
7 JUDGE BARRETT: Please be seated. Mr.  
8 Boydston.  
9 MR. BOYDSTON: Thank you, Your Honor.  
10 I think when we broke, we were talking about the  
11 empty EGEDA and the fact that the IPG-Fintage  
12 joint venture had entered into an agreement with  
13 EGEDA, do you recall that?  
14 THE WITNESS: That's correct.  
15 BY MR. BOYDSTON:  
16 Q And pursuant to that agreement, what  
17 did EGEDA do?  
18 A Well, EGEDA gave us the identity of  
19 the various entities with which it had  
20 affiliated, that is, according to -- they claim  
21 in the United States they were all  
22 Spanish-language entities, and I think my

266

1 recollection was that they were almost all from  
2 Spain. There were a few other Spanish-language  
3 territories, but generally, they were all from  
4 Spain.  
5 Q Now when IPG and EGEDA -- and Fintage,  
6 rather, split apart, who took over the duties to  
7 deal with the EGEDA properties in the United  
8 States, Fintage or IPG?  
9 A Fintage. We went through our --  
10 basically went through a divorce with them and  
11 went through any claim to the EGEDA contract.  
12 Q Now did EGEDA ever provide IPG and  
13 Fintage with evidence showing that it indeed had  
14 contractual rights with the entities it purported  
15 to represent?  
16 A No.  
17 Q And what were some --  
18 JUDGE BARRETT: I'm sorry -- did whom?  
19 MR. BOYDSTON: Sorry, Your Honor. I  
20 was referring to this entity EGEDA, which is a  
21 Spanish identity --  
22 JUDGE BARRETT: Okay, all right. I

267

1 just --  
2 MR. BOYDSTON: -- and whether or not  
3 they ever identified -- or provided IPG and  
4 Fintage with evidence to show that they actually  
5 had contractual relationships with the property  
6 owners they claimed to represent.  
7 THE WITNESS: And the answer was no,  
8 they have not.  
9 BY MR. BOYDSTON:  
10 Q And do you recall the names of some of  
11 those entities?  
12 A No, actually, I don't. There's,  
13 literally, there's lots of them.  
14 Q Have you seen in looking at the MPAA  
15 information that we've been discussing here  
16 today, have you seen the names of some of those  
17 entities -- did you recognize the names of some  
18 of those EGEDA entities as being entities now for  
19 which MPAA is making claim?  
20 A There are some, but predominantly, the  
21 programs that -- yes, there are some, because I  
22 went back and I compared the list of entities

268

1 that EGEDA had reported to us and those that were  
2 being claimed by the MPAA where Fintage is  
3 identified as the agent of those entities.  
4 In fact, we found, I am just  
5 refreshing my recollection, numerous, and just  
6 some of them right here -- Video Mercury Films  
7 S.A., Video Universal S.A., Venevision  
8 Internacional, Telefe, which is Television  
9 Federal Internacional S.A., Producciones Patoce  
10 S.A., PolyGram Iberica S.A. -- all of those were  
11 entities that were represented by EGEDA to us  
12 were represented by EGEDA.  
13 Within the MPAA's spreadsheet, their  
14 Excel spreadsheet that they provided us, it's  
15 indicated that those are entities on whose behalf  
16 MPAA is making program claims, identifying them  
17 as the purported owner, but not identifying EGEDA  
18 as the agent but identifying instead Fintage as  
19 the agent.  
20 Q And EGEDA is the sub-agent?  
21 A It presumably would be because there's  
22 -- of course, we haven't seen the contract

269

1 between Fintage and EGEDA or a contract between  
2 Fintage and any of these entities, but given on  
3 top of that there are I think 385 circumstances  
4 in which a particular program has been claimed by  
5 the MPAA and attributed to EGEDA as the owner,  
6 and they're not an owner or distributor of  
7 programming.

8 Q Let me ask you to take a look at  
9 what's been marked as Exhibit 36, and that is a  
10 list, it's got the title Claimants Claimed by  
11 Fintage House through EGEDA. And did you create  
12 this list?

13 A Yes, I did.

14 Q And what did you create it from?

15 A Again, this was taken from the Excel  
16 spreadsheet that the MPAA provided to us, and  
17 this has distilled down those entities that  
18 Fintage House has represented in that list to be  
19 the agent of, but for which our own information  
20 is that EGEDA was in fact the agent of that  
21 entity.

22 Q And is there anything in the record

270

1 that -- are there any agreements in the record  
2 that make the connection between EGEDA and these  
3 entities?

4 A There's no connection between EGEDA  
5 and these entities. There's no connection  
6 between Fintage and these entities. There's no  
7 connection between the MPAA and these entities.

8 MR. BOYDSTON: Thank you, Your Honor.  
9 Thank you, Mr. Gal -- Galaz, rather. Your Honor,  
10 I have nothing further.

11 JUDGE BARRETT: Mr. Olaniran?

12 MR. BOYDSTON: Oh, Your Honor, I beg  
13 your pardon. Very quickly, I wanted to -- I  
14 wanted to make a proffer of providing a document  
15 like the document Judge Strickler described. I  
16 -- in short order, IPG would spread the  
17 information that we've been referring to provided  
18 by the MPAA and cull it down to just the entities  
19 that were testified about here today and provide  
20 electronically to the parties and to the Judges,  
21 if that is convenient, by Tuesday of next week.

22 And we would ask that it be

271

1 provisionally marked as Exhibit 127, to be either  
2 admitted or not admitted later on by the Judges,  
3 and it would provide the MPAA the opportunity, if  
4 they wanted to, to contradict Mr. Galaz's  
5 statement thereon.

6 JUDGE STRICKLER: Your proffer is that  
7 this exhibit that you would create would be  
8 nothing other than a memorialization of Mr.  
9 Galaz's testimony to that effect today?

10 MR. BOYDSTON: That's correct.

11 MS. PLOVNICK: We've already heard his  
12 testimony and we have the whole spreadsheet, so  
13 --

14 MR. BOYDSTON: I -- we are making this  
15 proffer largely to address any possible concern  
16 that might be out there in the ether due to the  
17 comments by counsel for SDC.

18 JUDGE STRICKLER: Should we hear from  
19 the ether?

20 (Laughter.)

21 JUDGE BARRETT: Mr. Boydston, if you  
22 would like to prepare a summary document, you may

272

1 do so. We won't number it or mark it or make a  
2 ruling on its admissibility. Certainly, if you  
3 were to produce such a document and if the other  
4 parties do not find fault with it as in  
5 inaccuracies, it will be helpful to the Judges  
6 and aid in their deliberations, since the Judges  
7 don't have the entire spreadsheet, it was a  
8 discovery document.

9 MR. OLANIRAN: Your Honor, I would  
10 also suggest that I -- well, we just have a  
11 fundamental objection to somehow showing up -- a  
12 party trying to show up evidence at this point.  
13 And I think the whole discussion, ultimately it  
14 might be a misunderstanding of what Mr. Galaz --  
15 and I intend to ask questions about that, and  
16 then hopefully by the time we get through the  
17 questions, that will just illuminate what perhaps  
18 has been a misunderstanding.

19 JUDGE BARRETT: It would be merely a  
20 summary document, an illustrative document, if  
21 you will, a demonstrative -- not demonstrative,  
22 but illustrative of Mr. Galaz's testimony.

273

1 Before it can be admitted or considered for  
2 admission, all parties would have an opportunity  
3 to review it, you could have it overnight, you  
4 can have it over lunch.

5 JUDGE STRICKLER: I might add, in that  
6 vein, to the extent you see any discrepancies  
7 between Mr. Galaz's testimony and the summary  
8 document itself when you do your proposed  
9 findings of fact and conclusions of law, you can  
10 certainly point out that the summary differs from  
11 what was said and make whatever argument you want  
12 to make in that regard, because it's our  
13 intention as of now to rely on the testimony, not  
14 a document that's being created at the eleventh  
15 hour simply to be helpful.

16 If it's different, it's not helpful,  
17 and it's too late.

18 MR. OLANIRAN: I guess, just for the  
19 record, we were worried about the prejudicial  
20 effect that such a document might have, even  
21 allowing a summary of a document that we believe  
22 is fundamentally misunderstood.

274

1 The IPG's arguments are  
2 well-articulated in their briefs. There is a  
3 summary of those arguments in the spreadsheets  
4 that Your Honors asked us, asked each party to  
5 provide. Those have been provided.

6 Mr. Galaz has testified to what he  
7 understands about the relationships between the  
8 entities the MPAA represents. I intend to  
9 cross-examine him on those issues, and at the end  
10 of the day, his answers, my questions, and the  
11 same for MPAA, will fit in one of those boxes.

12 So asking again to show up a document  
13 that we believe is either flatly wrong or  
14 misunderstood could be prejudicial.

15 JUDGE BARRETT: Well, we don't have  
16 the document here. It hasn't been produced. It  
17 hasn't been offered. And you can argue all of  
18 those fine points, Mr. Olaniran, if and when Mr.  
19 Boydston shows up with a document that he wants  
20 us to consider, and then we can weigh whether we  
21 think it is beneficial to us as the finders of  
22 fact or whether we think the record is sufficient

275

1 without it, all right? Mr. MacLean --

2 JUDGE STRICKLER: Is any -- I am  
3 sorry.

4 JUDGE BARRETT: Oh, I'm sorry.

5 JUDGE STRICKLER: Is any counsel  
6 getting daily copy of the transcripts, or are you  
7 awaiting the transcripts on the same time frame  
8 we are?

9 MS. PLOVNIK: We just put in a  
10 request for daily, but it has -- I don't think  
11 that it has taken effect yet, so we will get it  
12 soon, but we don't have any of it yet.

13 JUDGE STRICKLER: I ask only because  
14 to the extent there may be any difference between  
15 the testimony that's supposed to be memorialized  
16 in the summary document and the summary document  
17 itself, and you have a daily copy, you'd be able  
18 to tell us that.

19 MS. PLOVNIK: Yes.

20 JUDGE STRICKLER: So that illuminates,  
21 Mr. Olaniran, the prejudicial problem, because we  
22 may be prejudiced, but at least it will be

276

1 pointed out to us.

2 (Laughter.)

3 JUDGE BARRETT: Mr. MacLean?

4 MR. MACLEAN: Okay, Your Honor, first  
5 of all I have no objection to the procedure the  
6 Judges have described, and provided of course  
7 that we have a chance to respond, and I  
8 understand that completely.

9 However, since we're on this topic, we  
10 -- I move for an order compelling the production  
11 of the summary that was provided to the witnesses  
12 whose declarations have been admitted here. That  
13 is something that -- that's a document that has  
14 not been produced to us and something that we  
15 should have the opportunity to examine.

16 MR. BOYDSTON: I'm sorry, I am -- I  
17 get your pardon, Mr. MacLean, I don't understand,  
18 what document are you referring to?

19 JUDGE STRICKLER: I think this is a  
20 tit-for-tat argument. He is shifting gears and  
21 he is saying he wants these underlying documents  
22 that were referenced in the certifications of the

277

1 declarations that the witness testified about  
2 from claimants that were not attached as exhibits  
3 to those certifications or declarations.

4 MR. MACLEAN: Correct. But where the  
5 benefit -

6 (Simultaneous speaking.)

7 MR. MACLEAN: -- said I reviewed this  
8 list of conflicting claims and Mr. Galaz, at  
9 least to my understanding, testified that the  
10 list was an excerpt from a spreadsheet. I want  
11 to see that excerpt, and I think I'm entitled to  
12 see it.

13 MS. PLOWNICK: Your Honor, that was my  
14 continuing objection to paragraph three, is that  
15 he took something and showed it to the claimant  
16 and had them react in the form of the declaration  
17 --

18 JUDGE BARRETT: Okay, this is separate  
19 and apart from the summary that we're talking  
20 about. I understand your concern about these  
21 declarants saying I reviewed the conflicting  
22 program claims. We don't know what conflicting

278

1 program claims they had reviewed.

2 And as I said before, I think that  
3 goes to the weight of the declaration. If you  
4 want to give us some three page brief on whether  
5 it's appropriate for us to reconsider that, and  
6 -

7 MR. MACLEAN: Your Honor, this isn't  
8 -- what I am saying now is not an objection to  
9 the admission of the declarations. I am asking  
10 for -- to compel the production of that document  
11 so that we can examine it since the declarants  
12 have --

13 MR. BOYDSTON: Your Honor, I think --  
14 sorry, I think we've covered this, you've ruled  
15 on it. I don't think the fact that I made a  
16 proffer to meet one of these requests is an open  
17 door for him to start making new motions. I am  
18 not even sure what he's asking for, to be honest.

19 JUDGE BARRETT: Okay. I will discuss  
20 this with my colleagues, and we will let you  
21 know, Mr. Boydston, whether there are some  
22 additional documents that you do need to provide.

279

1 It's a little late in the proceedings to be  
2 asking for us to compel discovery, but I  
3 understand what you're getting at, and we'll talk  
4 about it, we'll let you know. We'll let you  
5 know, more importantly, Mr. Boydston, because you  
6 and your clients would be the ones who would have  
7 to come up with that.

8 MR. BOYDSTON: Thank you, Your Honor.

9 JUDGE BARRETT: That data.

10 MR. BOYDSTON: Your Honor, I beg your  
11 pardon. I didn't move that Exhibit 36 go in.  
12 That was the last charge that Mr. Galaz testified  
13 about, and we move that Exhibit 36 be admitted.

14 MS. PLOWNICK: As long as it's clear  
15 it wasn't created by MPAA, we have no objection  
16 to it.

17 MR. MACLEAN: No objection.

18 JUDGE BARRETT: 36 is admitted.

19 (Whereupon, the above-referred to  
20 document was received into evidence as IPG  
21 Exhibit 36.)

22 MR. BOYDSTON: Thank you, Your Honor.

280

1 JUDGE BARRETT: Mr. Olaniran?

2 MR. OLANIRAN: Sure. Good afternoon,  
3 Mr. Galaz. My name is Greg Olaniran.

4 THE WITNESS: Good afternoon.

5 MR. OLANIRAN: And I am counsel for  
6 MPAA. I just wanted to talk a little bit about  
7 the exchanges we've had this afternoon about the  
8 spreadsheet.

9 THE WITNESS: Okay.

10 CROSS EXAMINATION

11 BY MR. OLANIRAN:

12 Q And -- excuse me, just to be clear,  
13 Exhibit 12 for example and similar exhibits that  
14 you pulled from this spreadsheet, this Excel  
15 spreadsheet -- that's your, Exhibit 12 for  
16 example would be your version of those MPAA  
17 titles that are being attributed directly to MPAA  
18 representative agents, is that a fair  
19 characterization?

20 A The documents that are spreadsheets  
21 that I have prepared here were, as I had  
22 indicated, derived from the Excel spreadsheet

281

1 that the MPAA provided to us, correct, that has  
2 culled down certain information that is  
3 represented to be what each of these spreadsheets  
4 are.

5 Q So there's an Excel spreadsheet that  
6 MPAA provided to you -- ?

7 A That was 44,000 entries.

8 Q Just a yes or no will be fine.

9 A Yes.

10 Q Okay. MPAA provided an Excel  
11 spreadsheet to you, and you then pulled out  
12 specific types of information from that  
13 spreadsheet to make some of the exhibits that  
14 have been discussed this afternoon.

15 A That's correct.

16 Q And one of those exhibits was Exhibit  
17 12, where you -- in my understanding, you  
18 attempt to demonstrate MPAA claimed titles that  
19 are attributed directly to agents, is that a fair  
20 description of it?

21 A That is correct, but even beyond that.

22 They are attributed not just to the agents that

283

1 as the copyright owner to programs claimed by the  
2 MPAA, but only limited to those circumstances  
3 where that particular owner in one or more years  
4 has been represented by an agent.

5 Q I am a little confused about the last  
6 part.

7 A Okay. I can give you an example.

8 Q Okay.

9 A Let's say that the MPAA entered into  
10 an agreement with company XYZ. And company XYZ  
11 has been accorded ownership of program XYZ. That  
12 would not appear -- company XYZ would not appear  
13 here because the contractual relationship is  
14 directly between the MPAA and company XYZ.

15 If, by contrast, that exact same  
16 relationship between company XYZ and program XYZ  
17 appeared in the MPAA data that indicated that  
18 company XYZ was represented through an agent,  
19 i.e. there is no contractual or correspondence  
20 relationship between the MPAA and company XYZ,  
21 company XYZ appears here.

22 And the means by which we identified

282

1 represented -- they are accorded to the purported  
2 copyright owners that are represented by agents.

3 JUDGE STRICKLER: I just want to make  
4 sure we're talking about the same document,  
5 because your question is about Exhibit 12 and  
6 you're making reference to titles, but I don't  
7 see titles listed on Exhibit 12.

8 JUDGE FEDER: Claimants, I am sorry,  
9 claimants.

10 JUDGE STRICKLER: Thank you.

11 JUDGE FEDER: Claimants.

12 JUDGE BARRETT: By -- again, by  
13 claimants, you are referring to the owners of the  
14 rights, not necessarily the representative agent  
15 of the owner? Or are you talking about a joint  
16 claimant? Might be an agent.

17 BY MR. OLANIRAN:

18 Q Well let me ask a different question.  
19 What is Exhibit 12 referencing? Just to make it  
20 easier.

21 A These are entities that have been  
22 accorded by the MPAA within its Excel spreadsheet

284

1 whether or not there is an agent or not in one or  
2 more years is -- the MPAA data was handled in two  
3 different ways. One way was in the column under  
4 which they identified copyright owner. In some  
5 circumstances, they put in parentheses the name  
6 of the agent. And that would be, for instance,  
7 First Miracle Productions (Compact).

8 In other circumstances, for other  
9 years, they had an additional column that simply  
10 said agent.

11 Q Okay. So really, Exhibit 12 is where  
12 there's no documented relationship between MPAA  
13 and the copyright owner.

14 A That's correct, and that's the  
15 heading. But for one or more years, not  
16 necessarily for all years.

17 Q I understand. Thanks for the  
18 clarification. But you also have other exhibits  
19 where agents attributed title ownership also, is  
20 that right?

21 A Other examples in which a --

22 Q You have other exhibits in which you

285

1 identify agents that are being attributed  
 2 copyright ownership, is that --  
 3 A Correct. Where a known agent has been  
 4 -- and that would be an example, for instance,  
 5 like EGEDA. We know EGEDA is --  
 6 Q Understood, understood.  
 7 A -- and their attributed copyright  
 8 owner.  
 9 Q So let's get back to the Excel  
 10 spreadsheet. You know that MPAA filed a written  
 11 direct statement, Ms. Saunders filed a written  
 12 direct statement, correct?  
 13 A Correct.  
 14 Q Okay. And in the written direct  
 15 statement, she had a list of -- she identified a  
 16 list of titles that are claimed by MPAA, right?  
 17 A Correct.  
 18 Q And then following the submission of  
 19 the written direct statement, there was  
 20 discovery, correct?  
 21 A Correct.  
 22 Q And during discovery we produced

286

1 certifications of title for the titles that have  
 2 been claimed in her written direct statement,  
 3 correct?  
 4 A That is correct.  
 5 Q Okay. And then there was discovery  
 6 disputes which resulted in a motion to compel by  
 7 IFG, correct?  
 8 A Correct.  
 9 Q And it was pursuant to that discovery  
 10 dispute that the Judges made the July 30 ruling,  
 11 correct?  
 12 A That is correct.  
 13 Q And then when the -- and our response  
 14 to your motion to compel was that there was no  
 15 database as you requested with regard to matching  
 16 owners and titles in the manner that you  
 17 requested, do you recall that?  
 18 A That was your response, but not the  
 19 testimony of Ms. Saunders.  
 20 Q We are not talking about the testimony  
 21 of Ms. Saunders. That stands, and let her speak  
 22 for herself --

287

1 A You are right. That was your  
 2 representation that there was no electronic  
 3 document that paired the MPAA-represented  
 4 copyright owner or claimant, even an agent, with  
 5 a particular program.  
 6 Q Okay. So in response to the parties'  
 7 dispute, the Judges issued an order on July 30,  
 8 correct?  
 9 A Correct.  
 10 Q Okay. And that order directed MPAA to  
 11 produce an electronic database, an electronic  
 12 spreadsheet, correct?  
 13 A That identified the claimant paired  
 14 with the program being claimed.  
 15 Q That identified the information in the  
 16 manner that you wanted, essentially.  
 17 A That's correct.  
 18 Q Okay. And so in response to that, you  
 19 received the Excel spreadsheet.  
 20 A The electronic document, correct.  
 21 Q Okay. So you now have in your hand at  
 22 that point Ms. Saunders's written direct

288

1 testimony listing the claims that are being made  
 2 by MPAA. You also have the hard copy of the  
 3 certifications, correct?  
 4 A The -- correct.  
 5 Q Okay. And now you have the Excel  
 6 spreadsheet.  
 7 A The Excel spreadsheet that ties those  
 8 two together, correct.  
 9 Q Well you have an Excel spreadsheet  
 10 that was prepared by Ms. Saunders's lawyer,  
 11 correct?  
 12 A Correct.  
 13 Q Okay. And you also get a digitized  
 14 copy of the appendices to Ms. Saunders's  
 15 testimony. And I use the word digitized to make  
 16 a distinction between electronic and -- digitized  
 17 hard copies which you can search, you can  
 18 certainly search, versus electronic spreadsheet  
 19 derived from a software such as Excel.  
 20 A Actually, I am not sure about that  
 21 last part. I don't recall whether or not we did  
 22 or not, but I do want to clarify one thing,



289

1 because the Excel spreadsheet that you're  
 2 referring to --  
 3 Q Yes.  
 4 A -- I think you may have referred to it  
 5 as somehow digitizing or putting in electronic  
 6 form the certifications, and that is not  
 7 completely clear, and that's why we were  
 8 referring to how it's not stricken, so if you  
 9 have the certification --  
 10 Q Let's look at Exhibit 333.  
 11 A 333. Okay.  
 12 Q Now the statement you just made about  
 13 a reference to certifications, do you see that in  
 14 here? I just want to make sure.  
 15 A The reference to certifications that  
 16 I just made?  
 17 Q Yes.  
 18 A I am somewhat at a loss. Are you --  
 19 Q I am sorry. I thought you made a  
 20 reference to something we represented to you  
 21 about certifications.  
 22 A Right. Here, I think there was a

290

1 representation -- my understanding from Ms.  
 2 Plovnick is she was saying that the Excel  
 3 spreadsheet was a representation or digitization,  
 4 some word to that effect, of what was in the  
 5 certifications, and that's what prompted the  
 6 Judges to say well, does it show, for instance,  
 7 where there has been something stricken?  
 8 That's not it. It's nothing of that  
 9 sort. There's --  
 10 Q So but, let me just direct your  
 11 attention to the first page of the letter.  
 12 A Okay.  
 13 Q And the second paragraph.  
 14 A All right.  
 15 Q And one two three, the fourth line  
 16 from the bottom of the second paragraph, the  
 17 sentence that starts with "In addition," do you  
 18 see that?  
 19 A Yes.  
 20 Q And it says, "In addition, MPAA is  
 21 producing electronic copies of Appendices A and B  
 22 to Jane Saunders's written testimony in this

291

1 proceeding.  
 2 A Okay.  
 3 Q Right? So you have Ms. Saunders's  
 4 testimony, and you have the certifications, and  
 5 --  
 6 A The hard copies of the certifications?  
 7 Q The hard copies of the certifications,  
 8 correct.  
 9 A Okay, 1,000 pages, okay, all right --  
 10 Q And then you have this created  
 11 electronic sheet that didn't exist before the  
 12 Judges' orders.  
 13 A Well, I think that's at issue,  
 14 actually.  
 15 Q Okay. Now in compiling all of the  
 16 exhibits that relied on the Excel spreadsheet,  
 17 for example with regard to the titles that the  
 18 MPAA is claiming, did you look at the  
 19 certifications?  
 20 A I did not -- and just to put this in  
 21 context, the certifications are, if I recall,  
 22 you've got some in evidence --

292

1 Q It's a yes or no question, Mr. Galaz.  
 2 A No.  
 3 Q Thank you. In preparing exhibits that  
 4 you derived from the Excel spreadsheet dealing  
 5 with MPAA's titles, did you look at Ms.  
 6 Saunders's written direct testimony, Appendix B  
 7 for Satellite and Satellite and Cable Testimony?  
 8 A I presumed it was an accurate  
 9 representation of it, so no, I didn't make a  
 10 comparison between the two.  
 11 JUDGE STRICKLER: Did you say you  
 12 presumed it was an accurate or inaccurate?  
 13 THE WITNESS: An accurate --  
 14 JUDGE STRICKLER: An accurate --  
 15 THE WITNESS: That the same titles  
 16 that appear in one are the same titles that  
 17 appear in the other.  
 18 JUDGE STRICKLER: Thank you.  
 19 BY MR. OLANIRAN:  
 20 Q So you didn't rely on certifications  
 21 and you didn't rely on her written direct  
 22 statement.

293

1 A I relied on the -- to create the  
2 documents that I have appended as exhibits and  
3 have been introduced here, I relied exclusively  
4 on the MPAA-produced Excel spreadsheet that ties  
5 the claimants with their claimed programs.

6 Q Fair enough. So if in fact there was  
7 a discrepancy, an addition that a hard copy  
8 certification would have provided for example  
9 that didn't show up on the Excel spreadsheet, you  
10 would not have captured that?

11 A If there was a discrepancy, which I  
12 presume there would not be, then -- then, I am  
13 sorry, your question is if I had checked an  
14 electronic version of Appendix B to Ms.  
15 Saunders's testimony, whether I would have caught  
16 it? I would have caught it if there was a  
17 discrepancy. I would not have thought there  
18 would have been a discrepancy. One was supposed  
19 to be representative of the other.

20 Q Well, that's your understanding.  
21 Let's just be clear about that. Your  
22 understanding is that the Excel spreadsheet is

294

1 supposed to be representative of the  
2 certifications and Appendix B, for example, in  
3 Ms. Saunders's testimony.

4 A Well, I --

5 Q Yes or no first, before you give an  
6 answer to that question --

7 A Well in a yes or no context, I can't  
8 answer your question.

9 Q Okay. We'll move on, then.

10 Now one of IPG's claims is that MPAA  
11 failed to substantiate its authority to  
12 represent, I think you had 582 claimants, is that  
13 correct?

14 A For one or more years, correct.

15 Q For one or more years. So -- and the  
16 copyright owners that you're talking about -- the  
17 basis for this is that you don't see a documented  
18 relationship between the copyright owner and  
19 MPAA, is that correct?

20 A Not entirely.

21 Q Okay, what's not correct about that?

22 A Well not only is there not a document

295

1 that establishes communication or contractual  
2 relationships between the purported copyright  
3 owner and the MPAA, but also the purported  
4 copyright owner and the purported agent. There's  
5 no documents for the particular years that we're  
6 dealing with that demonstrates that that party is  
7 making claim for programs for that year or has  
8 authorized anybody to represent them for that  
9 particular year. There's literally nothing.

10 Q No relationship, no documented  
11 relationship between the copyright owner and the  
12 agent or the copyright owner and MPAA, is that a  
13 fair --

14 A That's correct.

15 Q Thank you. And did you raise this  
16 issue before in the last proceeding, in the  
17 '00-'03 proceeding?

18 A We raised it in --

19 Q Just a yes or no.

20 A Yes.

21 Q Thank you. And are you aware that the  
22 Judges ruled on this issue before, that there's

296

1 no requirement to produce every single agreement  
2 that an agent has with a copyright owner? Yes or  
3 no.

4 A Well, again, in that narrow context,  
5 I'd say no.

6 Q You're not aware that the Judges ruled  
7 as such?

8 A That was not my understanding of the  
9 ruling --

10 Q Okay, let's move on. There is no  
11 point in debating the law with you.

12 A I am not debating.

13 Q IPG also, has also claimed that the  
14 Foreign Collection Societies are falsely  
15 attributed copyright ownership, correct?

16 A Correct.

17 Q And you testified to some of that  
18 earlier today. And you identified  
19 Australian-based Screenrights and also EGEDA, and  
20 I wish I could actually pronounce the full name  
21 of EGEDA, but I am a little short on Spanish.  
22 But it's E-G-E-D-A, I think, that's the acronym

297

1 for EGEDA.

2 And with regard to Screenrights, what  
3 evidence did you rely on to conclude that  
4 Screenrights was presented to serve as the  
5 copyright owner?

6 A I am sorry, what evidence did I rely  
7 on for? I didn't hear the last --

8 Q Concluding that Screenrights has been  
9 presented as a copyright owner.

10 A That they are identified as the  
11 purported copyright owner?

12 Q Yes.

13 A It appears actually in two documents.  
14 It appears in the electronic Excel spreadsheet  
15 that the MPAA has produced, pursuant to the July  
16 30 order, and I have one of our admitted exhibits  
17 as one that identifies for which programs  
18 Screenrights has been identified as the owner of  
19 a particular program.

20 Q And that identification --

21 A I didn't finish, I am sorry.

22 Q That's okay.

298

1 A And then the second document is  
2 actually the certifications of that AVCS  
3 Screenrights has executed, some of which are in  
4 your exhibit book.

5 Q The actual certifications?

6 A The actual certifications have an  
7 attachment that at the top says who the owner is,  
8 and then it identifies Screenrights.

9 Q So with regard to Screenrights, you  
10 wouldn't be on the Excel spreadsheet and looking  
11 at certifications?

12 A No, I didn't. But I have since  
13 because that was included in your exhibits, and I  
14 witnessed it there.

15 Q Okay. Now let's turn to Exhibit 338.

16 A Okay.

17 Q Are you there?

18 A Yes.

19 Q Okay. And Exhibit 338 is the  
20 Certification of Entitlement that was completed  
21 by Screenrights. And in that exhibit, do you  
22 have the certification for 2007, 2008, and 2009?

299

1 A Okay.

2 Q Okay. And on each one of the  
3 certifications, there are three ways in which a  
4 claimant could identify its status. Do you see  
5 that?

6 A Are you talking just on the first  
7 page?

8 Q On the first page, yes.

9 A Or the second page as well?

10 MR. BOYDSTON: This one is restricted.

11 JUDGE BARRETT: This is restricted and  
12 it's also not admitted yet into evidence, so --

13 MR. OLANIRAN: It is admitted.

14 JUDGE BARRETT: Oh, I am sorry, my  
15 notes are defective. If you have not signed a  
16 confidentiality agreement, would you please wait  
17 outside? If I remember I'll invite you back in  
18 before the day is over. And feel free to put  
19 that closed session sign on the other side of the  
20 door.

21 Thank you. Okay, go ahead, Mr.

22 Olaniran.

300

1 BY MR. OLANIRAN:

2 Q And I was asking that on Exhibit 338,  
3 on the very first page, the Certificate of  
4 Entitlement for 2007 that Screenrights executed  
5 -- you have three boxes in which you could check  
6 the status, correct?

7 A Correct.

8 Q One of the boxes that you could check  
9 is that owner other than corporation of  
10 partnership, right?

11 A Correct.

12 Q And you could check as an agent of  
13 owner other than corporation of partnership,  
14 correct?

15 A Correct.

16 Q And you could check as an officer or  
17 partner.

18 A Officer -- well, clarification.

19 Officer or partner of the legal entity identified  
20 as the owner or authorized agent of the owner of  
21 the programs on the print-out.

22 Q Okay --

301

1 A So it seems somewhat ambiguous as to  
2 whether you're -- you're purporting to be an  
3 officer or partner, but it's not clear whether  
4 you're an officer or partner of an agent or the  
5 underlying owner.

6 Q Move to strike, Your Honor, that's not  
7 a response that --

8 MR. BOYDSTON: Your Honor, he is only  
9 reciting what the thing says --

10 MR. OLANIRAN: No, he is actually  
11 trying to interpret a form that he is not an  
12 author.

13 JUDGE BARRETT: Granted.

14 BY MR. OLANIRAN:

15 Q So on -- so with respect to the  
16 Certification of Entitlement for 2007,  
17 Screenrights checks as an agent of owner, doesn't  
18 it?

19 A It checks agent of owner.

20 Q Okay, thank you. And why don't you  
21 look at the certifications for 2008?

22 A They all, I'll acknowledge, 2007,

302

1 2008, and 2009, the instances you've provided  
2 here, in each circumstance they've checked agent,  
3 but then the next --

4 Q That's not what I asked.

5 A -- the next exhibits contradict that.

6 Q I am not asking you about the next  
7 exhibits.

8 A I am not talking about the next  
9 exhibit, I am talking about the attachment to the  
10 face page on the exhibit.

11 JUDGE BARRETT: Mr. Galaz, wait for  
12 the question, okay?

13 MR. OLANIRAN: Thank you, Your Honor.

14 BY MR. OLANIRAN:

15 Q You also testified that EGEDA  
16 presented itself as a copyright owner, correct?

17 A I don't think I said EGEDA presented  
18 itself as a copyright owner. What I think I said  
19 is that the MPAA is attributing them as the  
20 copyright owner.

21 Q MPAA is attributing copyright  
22 ownership to EGEDA --

303

1 A Correct.

2 Q -- so are you, are you -- okay.

3 A I have no idea whether EGEDA is  
4 because there is no correspondence between EGEDA  
5 and any entity that has been produced to us.

6 Q So and your basis, again, is the Excel  
7 spreadsheet, is that right?

8 A The Excel spreadsheet that the MPAA  
9 produced that combines the identified copyright  
10 owner and agent, if there is an agent, with a  
11 particular program. There are 385 circumstances  
12 in which EGEDA is identified as the owner without  
13 agent.

14 Q Understood. Now, it would save a lot  
15 of time if you didn't keep explaining the Excel  
16 spreadsheet over and over again. I think we get  
17 the idea.

18 Now other than the Excel spreadsheet,  
19 did you review any other discovery with regard to  
20 the status of EGEDA as a copyright owner?

21 A There was nothing offered by EGEDA  
22 that was produced.

304

1 Q Let me direct your attention to --

2 A At least that I recall.

3 Q -- Exhibit 341.

4 A Okay.

5 Q And Exhibit 341, do you recognize that  
6 document?

7 A It appears to be several documents.

8 JUDGE STRICKLER: Which exhibit,  
9 counsel?

10 MR. OLANIRAN: 341, Your Honor.  
11 Pre-marked as 341, it hasn't been admitted yet.

12 BY MR. OLANIRAN:

13 Q Have you had a chance to review it?

14 A I am just glancing over it until you  
15 direct me to something in particular.

16 Q I asked you if you recognized the  
17 document.

18 A And I was saying it appears to be  
19 multiple documents.

20 Q There's multiple documents of the same  
21 kind, if you will.

22 A They -- there's the certification

305

1 signed by Fintage on behalf of Bell-Phillip for  
2 2001, 2002 -- well I mean, I don't know if you  
3 want me to go through all of them, but they are  
4 various certifications, they are a like type of  
5 document.

6 Q Okay. And you would have received  
7 these in discovery. You received these in  
8 discovery, did you not?

9 A I believe so, as indicated by the  
10 Bates stamp. That would indicate that they were  
11 received, this one in Satellite, if it's preceded  
12 by an S, Satellite, if it's preceded by a C, it's  
13 Cable.

14 Q And move to admit Exhibit 341, Your  
15 Honor.

16 MR. BOYDSTON: Well, Your Honor, I am  
17 not sure that this witness is able to  
18 authenticate this, so I would object on that  
19 ground.

20 There is another ground I'd like to  
21 object to that's a bit more weighty and applies  
22 to a few other exhibits as well. And this is, my

306

1 objection is as follows: it goes back to the  
2 testimony of Jane Saunders, and specifically with  
3 regard to, like looking at 341, the second page  
4 is a listing of just two programs. The fourth  
5 page is a listing of programs, and each of these  
6 have the certification followed by a listing of  
7 the number of programs.

8 And my question to Ms. Saunders was,  
9 you know, where do these come up? Where do these  
10 come from, these lists? There must have been  
11 some sort of a way to mesh together the owners of  
12 copyright and particular programs.

13 And she said, well, at the MPAA all we  
14 have is paper to do this, but at our third-party  
15 vendor, they had a computer database they used to  
16 generate these sheets that would then be, then,  
17 you know, stuck with the certifications and sent  
18 out.

19 And I said, well, okay, so your unit  
20 had them, your vendor had it --

21 JUDGE BARRETT: Could you give us a  
22 legal basis for the objection, Mr. Boydston,

307

1 instead of a narrative?

2 MR. BOYDSTON: I am sorry, Your Honor,  
3 it was just I had to describe what I was talking  
4 about. The legal basis is they never produced  
5 the electronic database that generated the list  
6 of programs.

7 They claim that no such electronic  
8 database existed, and yet when I questioned Ms.  
9 Saunders, she indicated that the third-party  
10 vendor did have such database, the Whitt entity,  
11 and that they provided that hard drive to  
12 counsel.

13 So counsel had the hard drive from Mr.  
14 Whitt's company that generated these lists even  
15 though they said in discovery that they didn't  
16 have such a thing, that they, in discovery, they  
17 insisted no, we have no such thing. And in fact  
18 it did exist, with the third-party vendor who, in  
19 2010, turned it over to counsel.

20 And I apologize because just, this has  
21 to do with testimony of several days ago.

22 MR. OLANIRAN: Your Honor, that's a

308

1 complete mischaracterization of Ms. Saunders's  
2 testimony. I distinctly recall Ms. Saunders  
3 explaining --

4 MR. BOYDSTON: I beg your pardon, can  
5 you speak up?

6 MR. OLANIRAN: I distinctly recall Ms.  
7 Saunders explaining about the piles of paper that  
8 Ms. Kessler had to deal with when it was time to  
9 complete the certification projects.

10 MR. BOYDSTON: Precisely. And what  
11 Ms. Saunders said was that the program lists that  
12 are behind each of these certifications were  
13 delivered to Ms. Kessler from the third-party  
14 vendor, but that the third-party vendor came up  
15 with them by electronic means and then handed  
16 them over to the MPAA.

17 And then she continued to respond to  
18 my questions. I said, well what happened to that  
19 database? She said, a third-party vendor stopped  
20 doing business and gave its hard drive to counsel  
21 for the MPAA. So, when we asked in discovery,  
22 when we demanded that, the MPAA responded that it

309

1 didn't have it. Well, clearly it had it in its  
2 control in that the exact hard drive that created  
3 those lists had been provided to counsel for the  
4 MPAA.

5 MR. OLANIRAN: Your Honor, I find this  
6 quite interesting given that IPG itself has  
7 actually moved in one or maybe two of very, very  
8 similar exhibits, which are certifications  
9 supported by these same sheets that he is now  
10 campaigning to have kept out of evidence.

11 MR. BOYDSTON: Your Honor, no, I don't  
12 think so. There was no database demanded of us  
13 that we said didn't exist that in fact was in  
14 control of counsel or of my client.

15 MR. OLANIRAN: No, I am saying that  
16 you have actually moved in -- I believe you have  
17 moved in one of the --

18 JUDGE BARRETT: No cross talk, please.

19 Mr. Olaniran, address your comments to the bench.

20 MR. OLANIRAN: Sorry about that, Your  
21 Honor.

22 What I was saying is that I think --

310

1 I don't recall the exhibit number, but I believe  
2 one of the certifications was actually moved in  
3 while IPG was presenting.

4 MR. BOYDSTON: Yes, that's true. 338  
5 was moved in before we got to that point in Ms.  
6 Saunders's declaration, or testimony. I didn't  
7 raise any objection to that there, but that  
8 doesn't mean I can't raise one here.

9 JUDGE BARRETT: Well 338 is in, so --

10 MR. BOYDSTON: Right, I -- no debate  
11 there, I am not objecting to that. I am  
12 objecting to this one.

13 MR. OLANIRAN: It is all the same type  
14 of evidence, Your Honor. It's --

15 MR. BOYDSTON: Certifications --

16 MR. OLANIRAN: Certifications, let me  
17 finish. Certifications on the front page, and  
18 the computer print out is attached to each  
19 certification form.

20 MR. BOYDSTON: There is no question it  
21 is the same type of document. I didn't object to  
22 the other. That doesn't preclude me from

311

1 objecting to this one or others.

2 JUDGE STRICKLER: What's the legal  
3 objection?

4 MR. BOYDSTON: The legal objection is  
5 the second page's list of the titles were derived  
6 from an electronic database that we demanded in  
7 discovery, the MPAA said it didn't exist, Ms.  
8 Saunders's testimony indicated it did exist with  
9 a third-party vendor, and in 2010, if my memory  
10 served, the vendor gave it to counsel for the  
11 MPAA.

12 Thereafter, we demanded it in  
13 discovery and it wasn't produced, and therefore I  
14 am objecting to this document on the grounds that  
15 the program that produced -- the program list was  
16 not produced, even though it was within the  
17 control of the MPAA and it was requested.

18 JUDGE STRICKLER: How have you come to  
19 the conclusion, maybe I am missing it, that  
20 Exhibit 341 was derived from the document from  
21 the spreadsheet that you didn't receive?

22 MR. BOYDSTON: Because when I asked

312

1 Ms. Saunders where those lists came from, she  
2 said they were delivered to the MPAA by the  
3 third-party vendor, the Whitt entity, and that  
4 the Whitt entity created electronically with a  
5 program that took the big giant lists of all the  
6 programs and the big giant lists of all the  
7 program owners and connected the two.

8 And then she said they printed out a  
9 big stack and gave it to Marsha Kessler to match  
10 up with the certifications. And then I said well  
11 gee, whatever happened to that electronic  
12 database? And she said well, Whitt went out of  
13 business and turned over the hard drive to  
14 counsel, meaning counsel for the MPAA.

15 Thereafter, during these proceedings,  
16 we demanded such a document, or I should say  
17 database. We were told it didn't exist, and then  
18 that was contradicted by Ms. Saunders's  
19 testimony.

20 JUDGE STRICKLER: So you're saying you  
21 would have had the same objection to 338 had you  
22 had other information or thought of it

313

1 previously?

2 MR. BOYDSTON: Perhaps. And maybe I  
3 would have let 338 come in if I wanted to see  
4 certain information in 338. But at the time 338  
5 came out, I was asking a question of Ms.  
6 Saunders, and I wanted to continue asking my  
7 question, and she hadn't provided that  
8 information at that time.

9 JUDGE STRICKLER: And you're offering  
10 this into evidence now based on what foundation,  
11 Mr. Olaniran?

12 MR. OLANIRAN: Off the basis that we  
13 produced it to them in discovery.

14 JUDGE BARRETT: In hard copy?

15 MR. OLANIRAN: In hard copy, yes. And  
16 Your Honor, I wish I had the transcript of Ms.  
17 Saunders's testimony, so I am at a disadvantage.  
18 What we've heard is Mr. Boydston's version of  
19 what Ms. Saunders testified to, and --

20 JUDGE BARRETT: And you would  
21 controvert that by saying what?

22 MR. OLANIRAN: By saying that is not

315

1 what I recall, not that counsel got it. But be  
2 that as it may.

3 MR. OLANIRAN: It was something along  
4 those lines, and I forget what she said about the  
5 availability of it, something like that.

6 JUDGE STRICKLER: The issue at hand is  
7 whether or not to admit 341.

8 MR. OLANIRAN: Correct.

9 JUDGE STRICKLER: And the question --  
10 there is an objection based on a lack of  
11 foundation, you didn't have sufficient documents  
12 that were used to create 341, correct, Mr.  
13 Boydston?

14 MR. BOYDSTON: Correct.

15 JUDGE STRICKLER: And the witness who  
16 can provide that foundation is sitting right  
17 here, Ms. Saunders, in the courtroom, right now.

18 MR. BOYDSTON: Right.

19 JUDGE BARRETT: Okay. So we'd like to  
20 hear from Ms. Saunders to figure out --

21 MS. SAUNDERS: Oh thank heavens,  
22 because this is killing me.

314

1 Ms. Saunders's testimony.

2 JUDGE BARRETT: Can you paraphrase  
3 what you think Ms. Saunders's testimony is?

4 MR. OLANIRAN: I said earlier to Ms.  
5 Saunders that she had a stack of paper, and what  
6 I suspect this is -- what I am almost certain  
7 this is, actually, I asked Ms. Saunders again,  
8 are the copies of the stacks of paper that Ms.  
9 Kessler used to compile the certifications.

10 JUDGE BARRETT: Okay -- yeah. We  
11 still have the issue of Mr. Whitt's hard drive  
12 being -- when he retired, he turned over his hard  
13 drive except for the one he later discovered in  
14 his basement, which we've learned in a companion  
15 proceeding. Did he turn that over to MPAA? Did  
16 he turn that over to your firm? Does anybody  
17 know what he did with his hard drive when he  
18 retired?

19 MR. OLANIRAN: I don't recall Ms.  
20 Saunders's testimony on that particular --  
21 exactly what the --

22 JUDGE BARRETT: MPAA got it, that's

316

1 (Laughter.)

2 JUDGE BARRETT: Ms. Saunders, you  
3 remain under oath.

4 MS. SAUNDERS: Yes, absolutely.

5 JUDGE BARRETT: And you must not swear  
6 any.

7 MS. SAUNDERS: Unless thank heavens  
8 counts as a swear, I will try. Who is  
9 questioning me?

10 JUDGE BARRETT: Mr. Olaniran is --

11 MS. SAUNDERS: Okay.

12 JUDGE BARRETT: But Mr. Boydston may  
13 voir dire --

14 MS. SAUNDERS: Absolutely.

15 JUDGE BARRETT: -- depending on where  
16 we go with this. Mr. Olaniran?

17 DIRECT EXAMINATION

18 BY MR. OLANIRAN:

19 Q Ms. Saunders, are you looking at  
20 Exhibit 341?

21 A Yes, I am.

22 Q And what is that exhibit?

317

1 A It is a certification for -- actually,  
2 it is a series of certifications executed by a  
3 Fintage, by an officer or the managing director  
4 of Fintage, in respect of claims made for various  
5 satellite and cable retransmission royalties over  
6 the period of 2001, 2002 -- hold on, it's going  
7 to take me a while -- I am guessing up through,  
8 let's see, 2004, 2007, I am going to guess it's  
9 through -- unless you want me to go through every  
10 single one, which is going to take me a minute  
11 because unhelpfully, there's no colored paper  
12 between these.

13 Q Okay. That's --

14 A It goes up through -- it says 2004 to  
15 2009, so --

16 Q Okay, and it's not just one, there's  
17 multiple entities on whose behalf Fintage  
18 executed the --

19 A Yes, yes, that is correct, yes, that  
20 is correct.

21 Q And how was the document created?

22 A I am sorry?

318

1 Q How was the document created?

2 A Created?

3 Q Yes.

4 A So as I testified previously, Mr.  
5 Whitt gave, produced to Ms. Kessler hard copies  
6 of the list of titles which -- and the claimants  
7 associated with those titles, to which Mr.  
8 Kessler would append, or appended, a cover  
9 Certification of Entitlement form for the  
10 claimant to execute confirming that the capacity  
11 in which they make the claim, that they filed a  
12 valid claim for the royalties, and confirming  
13 through either -- through notations on the titles  
14 list in each year which titles they want to -- or  
15 they could claim cable retransmission or  
16 satellite retransmission royalties.

17 I think I got the grammar all messed  
18 up there. But the years for which and the titles  
19 which they could claim in each of the royalty  
20 years.

21 Q You have other certifications in the  
22 record, don't you?

319

1 A Yes, yes we do. I think we have a  
2 few. I think we have certifications for many of  
3 the claimants that IPG has challenged.

4 Q Would you look at 337, the exhibit  
5 pre-marked as 337?

6 A Yes, yes. This is a certification  
7 signed by Allied Communications by C.B. McKay, as  
8 a Regional CEO for Allied Communications. And do  
9 you need me to tell you for what years? It  
10 appears to be satellite royalties in 2005 with a  
11 list of titles appended.

12 Q Also, would you look at Exhibit 339  
13 please?

14 A Yes. Also a certification, executed  
15 on behalf of CBS Broadcasting on behalf of King  
16 World Productions, signed by the Vice President  
17 and Assistant Secretary Martin Messinger --

18 Q Okay --

19 A -- for, sorry, for satellite royalties  
20 in calendar year 2000, with a fairly lengthy  
21 title list. Oh, sorry, with a title list, and  
22 then a satellite retransmission royalties

320

1 certification for calendar year 2000. Both are  
2 certified to as officer or partner of the entity  
3 identified as the owner or authorized agent.

4 MR. BOYDSTON: Your Honor, this is  
5 covering old ground.

6 JUDGE BARRETT: May I just jump in  
7 here and say something to cut to the chase. Mr.  
8 Whitt created these papers, gave them to Ms.  
9 Kessler. Ms. Kessler ran with the ball.

10 THE WITNESS: Yes.

11 JUDGE BARRETT: When Mr. Whitt  
12 retired, he took the hard drive out of his  
13 computer. Do you have any knowledge what he did  
14 with it at that point?

15 THE WITNESS: I do.

16 JUDGE BARRETT: And what is that?

17 THE WITNESS: He gave the hard drive  
18 to MPAA, and I gave that hard drive to counsel.  
19 I think this is the part of my testimony where I  
20 said I was not the cyber-judge. I took the hard  
21 drive and I gave it to my counsel, and I  
22 instructed my counsel to extract from it whatever



321

1 they could.

2 I specifically did not say that Mr.  
3 Whitt had a database. I think I specifically  
4 said that I did not know how Mr. Whitt conducted  
5 his operations or how he compiled his data. I  
6 did say that Mr. Whitt did rely on broadcast data  
7 that was acquired in order to generate those  
8 lists. That was the extent, I believe, of how I  
9 characterized Mr. Whitt's operation.

10 JUDGE BARRETT: Mr. Olaniran, could  
11 you make a representation as an officer of the  
12 court that your office made an effort to extract  
13 data from Mr. Whitt's hard drive?

14 MR. OLANIRAN: Yes we did, Your Honor.

15 JUDGE BARRETT: Okay. And what did  
16 you do with the data you were able -- if you were  
17 able to extract any, what did you do with it, or  
18 how did you configure it, and where is that base  
19 of knowledge at this point?

20 MR. OLANIRAN: I am not the  
21 cyber-lawyer. If Ms. Plovnick --

22 JUDGE BARRETT: Ms. Plovnick --

323

1 MS. PLOVNICK: Yes, Your Honor.

2 MR. OLANIRAN: I would also add -- and  
3 Mr. Whitt has some damage to some of the drives,  
4 and I think that issue in fact came up. In one  
5 of the proceedings, I think perhaps they were  
6 describing a 99 percent damage --

7 MS. PLOVNICK: I think that was the  
8 one in his basement.

9 MR. BOYDSTON: Your Honor, I think it  
10 ought to be taken into consideration that Mr.  
11 Olaniran has said he is not the cyber-lawyer, so  
12 now all of a sudden he knows what the damage is.  
13 I don't know how that came up.

14 JUDGE BARRETT: Well we were just here  
15 15 minutes ago in the 1999 proceeding, and we had  
16 extensive testimony from Mr. Whitt. And I don't  
17 think we need to repeat that here, but to the  
18 extent we need to know what Mr. Whitt's processes  
19 and history are or were, we can incorporate the  
20 transcript of the 1999 hearings -- we all know  
21 Mr. Whitt had a company, he did his data  
22 manipulation, he retired, he turned over what he

322

1 MR. OLANIRAN: Yes.

2 MS. PLOVNICK: We examined the hard  
3 drive, and we found various -- you know, we went  
4 though the hard drive, and we extracted what we  
5 could, and we used as much of it as we could to  
6 form the Excel spreadsheet that we produced.

7 We tried to be as -- you know, to cull  
8 what we could to do that. And so that is the  
9 electronic record that we were able to create  
10 based on what was not in a database form.

11 JUDGE STRICKLER: What form was it in?

12 MS. PLOVNICK: It was multiple, all  
13 over the place, very not very well-maintained  
14 condition files, I assess that this way. I am  
15 also not a cyber person, but it was a collection  
16 of bits --

17 JUDGE BARRETT: Are you making a  
18 representation that your law firm extracted  
19 everything that was extractable from the hard  
20 drive and incorporated everything into the  
21 spreadsheet that you created in response to the  
22 Judges' discovery order?

324

1 could, he found one in his basement on the eve of  
2 our determination in the '99 proceeding, you  
3 know, we are familiar with that, okay?

4 So all I need to establish today, or  
5 all we need to establish, is whether there is any  
6 data anywhere in any form, I mean useable form,  
7 that is not included in the spreadsheet that  
8 MPAA's counsel produced in response to the  
9 Judges' July order. And I understand you -- I  
10 will let you answer that, is there, to your  
11 knowledge?

12 MS. PLOVNICK: Not to my knowledge.

13 JUDGE BARRETT: Okay.

14 MR. OLANIRAN: I am very confident,  
15 Your Honor, that there isn't.

16 JUDGE BARRETT: Okay.

17 MR. OLANIRAN: And if I could add one  
18 final point, I know -- and this is why it was  
19 absolutely critical that for Appendices A and B  
20 for Ms. Saunders's testimony, you could not rely  
21 on anything else but the list of claimants  
22 supported by the representation record and the

325

1 list of titles supported by the certification.  
2 JUDGE STRICKLER: As opposed to the  
3 Excel spreadsheet.

4 MR. OLANIRAN: As opposed -- well.

5 JUDGE STRICKLER: Among other things,  
6 as opposed to the Excel spreadsheet --

7 MR. OLANIRAN: Again, if you read our  
8 briefs, we were trying to explain as much as we  
9 can. This is exactly the problem that we were  
10 trying to articulate in our briefs because our  
11 interpretation of the discovery rule is to  
12 provide documents that underlie the testimony.  
13 The document that underlies Ms. Saunders's  
14 testimony with regard to the titles that were  
15 claimed are the certifications which we provided,  
16 and also, the list appended to her testimony  
17 which was digitized, I believe, in searchable  
18 form, for IPG to use.

19 JUDGE BARRETT: Mr. MacLean, you were  
20 on your feet.

21 MR. MACLEAN: Oh. Your Honor, I  
22 decided not to interrupt. However, since you

327

1 questions of Ms. Saunders before your client gets  
2 back on the stand?

3 MR. BOYDSTON: I would. Can I just do  
4 it from here?

5 JUDGE BARRETT: As long as the court  
6 reporter can hear you.

7 MR. BOYDSTON: Okay.

8 CROSS EXAMINATION

9 BY MR. BOYDSTON:

10 Q Now Ms. Saunders, and correct me if  
11 I'm wrong, I am only going off memory, I don't  
12 have a transcript, but my recollection was that  
13 this all came up originally in the context of me  
14 asking you about Appendix A and B to your  
15 declaration, one of which listed programs and one  
16 of which listed program owners. Do you --

17 A Claimants, claimants.

18 Q -- recall -- thank you, claimants.  
19 Thank you, claimants, yes. Do you recall that --  
20 ?

21 Q I do.

22 A And my question was initially

326

1 have called on me, Your Honor -- and I am  
2 actually a little bit embarrassed to raise this  
3 because I know how it might sound -- however, Mr.  
4 Galaz is at this very moment a witness on the  
5 stand even though he is not sitting in the  
6 witness chair right now.

7 Ms. Saunders is testifying only as to,  
8 as I understand, the foundation with respect to a  
9 document that was offered in Mr. Galaz's  
10 testimony. I would request the Judges to  
11 admonish and direct Mr. Galaz not to pass notes  
12 and whisper with his counsel, particularly  
13 regarding his testimony while he is a witness on  
14 the stand.

15 MR. BOYDSTON: Your Honor, there has  
16 been no communication between us about his  
17 testimony. There has been communication with us  
18 about her testimony, and I think that's  
19 permissible.

20 JUDGE BARRETT: Thank you, it is.

21 Thank you, Mr. MacLean.

22 Mr. Boydston, do you want to ask any

328

1 something along the lines of, you know, how did  
2 you connect the two? From this big list of  
3 programs, how do you connect which programs are  
4 owned by which claimant? And you said that Mr.  
5 Whitt did that, the third-party vendor. Is that  
6 correct?

7 A That's correct.

8 Q And I said, okay. And do you know how  
9 he did it? And you said something to the effect  
10 of I don't know, but he took those things and he  
11 used some sort of computer programs or something  
12 like that to do it and came up with lists and  
13 then returned them to us in a paper format, at  
14 which point Marsha Kessler and then her successor  
15 put them together with certifications. Is that  
16 accurate?

17 A I don't know if the actual words you  
18 just used are accurate, but the concept is  
19 absolutely spot-on. I do not know what was in  
20 Mr. Whitt's machines, his processes. I do not  
21 know if he created a database. I do not know how  
22 he used the information that came to him. All I

329

1 know is what the MPAA got and distributed to his  
2 claimants, or I should say, I know that Ms.  
3 Kessler distributed it to her claimants.

4 Q What were -- where did the appendices  
5 come from?

6 A The appendices were -- they were  
7 generated, as I understand it, by Mr. Whitt in  
8 respect of each claimant.

9 Q Okay. Just to make clear, when I say  
10 appendices, I mean the Appendix A and Appendix B  
11 --

12 A Oh, I am so sorry. The list of our  
13 claimants and of our titles?

14 Q Yes, right.

15 A I -- those lists were prepared by  
16 counsel in response to, or based on the  
17 certification reports that were returned to MPAA  
18 by our claimants.

19 Q So they would get the certification  
20 reports in and they'd just make a big list?

21 A Yes, exactly. It was really arduous.

22 Q Then you testified -- I asked you, I

331

1 parties, yes?

2 Q Did you communicate with counsel as to  
3 how those were created, or do you know how those  
4 were created by counsel? Did they type up the  
5 1,000 pages, or do you know?

6 A I don't know.

7 Q Now given that the certifications and  
8 the program lists attached to the certifications  
9 were created by Mr. Whitt, to your knowledge,  
10 from the -- and using his devices, whatever they  
11 were, and given that the chart that was given to  
12 IPG pursuant to the order by the court was  
13 created by the same source, according to your  
14 counsel, wouldn't you expect that they would line  
15 up?

16 A No. I believe, and I had lengthy  
17 conversations with my lawyers during which I  
18 almost tore my hair out because this process took  
19 forever and cost thousands and thousands of  
20 dollars --

21 Q And which one was this extraction?

22 A Extracting the lists of claimants and

330

1 think, you know whatever -- actually, I don't  
2 remember --

3 A And I should also add it was really  
4 expensive.

5 Q I bet it was. You then -- my  
6 recollection is that you then testified that when  
7 Mr. Whitt retired, he turned over his hard drive  
8 to you, and then you turned it over to your  
9 counsel, correct?

10 A He turned it over, actually, to then,  
11 our then-Director for Retransmission Royalty,  
12 Sandra Pope, who at my instruction turned it over  
13 -- actually, I believe that my instruction was  
14 that my lawyers send a courier and collect from  
15 Ms. Pope's office literally every scrap of every  
16 thing that she could find or lay her hands on  
17 that pertained to these proceedings and these  
18 royalty years, including Mr. Whitt's hard drive.

19 Q The Appendix A and B to your  
20 declaration, you remember my talking about the  
21 programs --

22 A The lists and the claimants and the

332

1 owners by royalty year to cover all the years at  
2 issue in this proceeding, and it was beyond  
3 frustrating that we didn't have a single, to use  
4 your word, database that we could draw from  
5 because that would have made all of our lives so  
6 much easier.

7 Q The extraction you are talking about  
8 is what extraction, the extraction from Mr.  
9 Whitt's hard drive?

10 A No. I am talking about the melding  
11 together or the retrieval of data from all the  
12 sources at our disposal, which were Mr. Whitt's  
13 hard drive, the paper records individually by  
14 royalty year, and the process of making a  
15 compendium that went claimant by year for all the  
16 years and all the claimants that are at issue in  
17 this proceeding.

18 Q And when did this process that you're  
19 describing right now take place? I am a little  
20 confused.

21 A Well I actually don't recall. I  
22 remember many conversations that I had from my

333

1 home office, walking around in frustration in my  
2 living room. This fall, this fall -- this fall,  
3 starting back in the spring, I don't, I am sorry,  
4 I do not recall.

5 Q Do you recall if that was the effort  
6 that was made in response to the Judges' order to  
7 come up with --

8 A Oh no, I --

9 MR. OLANIRAN: Objection, Your Honor.  
10 We are now wading into way outside the scope.

11 MR. BOYDSTON: Well I am just -- she  
12 was explaining when this took place, and I was  
13 just trying to identify --

14 THE WITNESS: No no, that conversation  
15 I remember very, very clearly. That was a phone  
16 call I got telling me that we had to produce an  
17 electronic record, and I was embarrassed because  
18 I believe the order actually said something to  
19 the effect that MPAA is such a sophisticated  
20 organization, we don't believe that they don't  
21 have an electronic database, by which I was quite  
22 chagrined.

335

1 JUDGE STRICKLER: And not from the  
2 hard drive?

3 MS. PLOVNIK: Not from the hard  
4 drive.

5 JUDGE STRICKLER: And the hard drive  
6 was used to create the information that was  
7 required pursuant to our order?

8 MS. PLOVNIK: Yes, Your Honor.

9 JUDGE STRICKLER: Those are two  
10 distinct things.

11 JUDGE BARRETT: And perhaps some of  
12 the information that is attached to the  
13 certifications, but we are taking that on faith.

14 MS. PLOVNIK: Mr. Whitt did those.

15 JUDGE BARRETT: Yes.

16 MS. PLOVNIK: Yes.

17 JUDGE BARRETT: And it's his hard  
18 drive.

19 JUDGE STRICKLER: Because Mr. Whitt's  
20 hard drive information is derived, at least in  
21 part, from the same -- from that paper, those  
22 papers that Ms. Kessler had been --

334

1 (Laughter.)

2 JUDGE STRICKLER: I just want to ask  
3 you a quick question so I can understand this.  
4 Appendix A and Appendix B deal with  
5 certification, okay?

6 THE WITNESS: Yes.

7 JUDGE STRICKLER: Were those based at  
8 all on anything on Mr. Whitt's hard drive? Yes  
9 or no? I am not interested in your living room.  
10 Yes or no?

11 THE WITNESS: I -- well, I did not  
12 know that until Ms. Plovnick just said that they  
13 used data from Mr. Whitt's hard drive.

14 MS. PLOVNIK: No, just to clarify.  
15 Appendix A and B are from the certification, and  
16 you know, what she was talking about with the  
17 Excel file was something --

18 JUDGE STRICKLER: Okay, okay, you know  
19 what, I want to understand this. Exhibits A and  
20 B came from what?

21 MS. PLOVNIK: The certifications.

22 THE WITNESS: Yes.

336

1 MS. PLOVNIK: He made the paper that  
2 went to Ms. Kessler.

3 MR. OLANIRAN: And just a point of  
4 clarification, Mr. Whitt -- the sheets that  
5 support the certifications were delivered to MPAA  
6 long before this proceeding --

7 MS. PLOVNIK: Days before.

8 MR. OLANIRAN: -- when Mr. Whitt was  
9 still running his operation and he had complete  
10 control of his operation.

11 MS. PLOVNIK: Very archaic, days of  
12 old --

13 MR. OLANIRAN: Now the databases were  
14 produced, we went scrambling for them to comply  
15 with the Judges' order.

16 JUDGE STRICKLER: So if someone wanted  
17 to try to impeach Ms. Saunders's Appendix A and  
18 Appendix B by looking at the underlying material,  
19 it's your position, then, that they should not be  
20 looking at the hard -- any information on that  
21 Excel spreadsheet, but they should be looking at  
22 the underlying documentation itself?

337

1 MR. OLANIRAN: I am so glad you put it  
2 that way because that's exactly the point that I  
3 was making earlier, and this is what I meant by  
4 it would be a completely meaningless exercise to  
5 tabulate or to organize in some form this  
6 information on this Excel spreadsheet because it  
7 was not the basis for Appendices A and B in Ms.  
8 Saunders's accounting.

9 JUDGE STRICKLER: So I understand  
10 that, and I thank you, I think I understand your  
11 position. But it's IPG's position that they are  
12 in a position to if not impeach the value of  
13 those appendices, to question them because there  
14 are other documents that were within the care,  
15 custody, and control of MPAA or its agents  
16 including Mr. Whitt and whomever he gave his hard  
17 drive information, and to compare that  
18 information with the claims that are being made  
19 and representing that these copyrights really  
20 weren't owned by or had an agency with those who  
21 are represented on Appendices A and B.

22 You might say pay no attention to that

339

1 the -- to provide a list for the claimants to  
2 sign up on to actually certify.

3 And that's what made it into the --  
4 whatever may be in Mr. Whitt's database that was  
5 provided this June when we were scrambling around  
6 trying to figure out a way to comply with the  
7 order --

8 JUDGE STRICKLER: Well you had to  
9 figure out a way to comply with the order, and I  
10 suppose one of the things you could have done --  
11 I am not saying you did, or -- but you could have  
12 said we can't comply, there is no such material  
13 that exists. Instead you said --

14 MR. OLANIRAN: We said --

15 JUDGE STRICKLER: But let me finish.  
16 And then you complied by saying here is  
17 information that we have that complies with the  
18 order and provides the necessary information  
19 about the copyrights and the agents and the  
20 owners, and now in some sense you are saying  
21 well, yeah, we did that for you, but pay no  
22 attention to what we did because we had to give

338

1 document behind the curtain, but they want us to  
2 pay every bit of attention to it, and then we  
3 have to decide whether that's a good impeachment  
4 or not.

5 MR. OLANIRAN: That's a fair point,  
6 but Mr. Whitt was not deciding who owns the  
7 copyright or not.

8 JUDGE STRICKLER: But you gave them  
9 the documents, Mr. Whitt's information, and he is  
10 now saying I am comparing that information to  
11 what I see in your representations, and I see a  
12 difference. And you're saying that difference  
13 doesn't matter because that Mr. Whitt's  
14 information is of no relevance.

15 MR. OLANIRAN: Well this is Mr.  
16 Whitt's information long after he stopped running  
17 his operation. Anything could have gone on with  
18 those databases. What is most relevant is the  
19 information that Mr. Whitt delivered to MPAA when  
20 Mr. Whitt was running his shop and Mr. Whitt was  
21 in constant communication with Ms. Kessler and  
22 they were trying to figure out a way to support

340

1 you something, so we gave you a bunch of junk.

2 MR. OLANIRAN: Your Honor, it was  
3 quite a frustrating experience trying to figure  
4 out what to do, and I don't deny that that is --  
5 that would have been one option. And we did the  
6 best we could under the circumstances, knowing  
7 that -- and now, and another way to look at this,  
8 had we done what you said and they go in the  
9 database and they see the discrepancies between  
10 what we produced and -- between the hard copy of  
11 the certifications and what's in that database,  
12 then we may have come here arguing about the  
13 discrepancies.

14 And I don't -- I think that that's a  
15 fair point, but then we get arguing about well  
16 why are there discrepancies? And we would still  
17 be going back to look at the certifications.  
18 That's what the claimants are claiming.

19 JUDGE STRICKLER: Okay. But you  
20 produced that. It is in response to our order,  
21 but it's in response to our order compelling for  
22 the discovery, so it constitutes discovery.

341

1 And so you can point out that your own  
2 discovery that you produced has holes in it,  
3 deficiencies in it, and you can make that  
4 argument, and you are making that argument --

5 MR. OLANIRAN: We actually stated that  
6 in the cover letter that went to IPG. And if you  
7 look at 333, that's exactly why we make that  
8 point because we know, as lawyers, we don't  
9 produce discovery, and most of the work we claim  
10 work product privilege on, and we had to find --

11 JUDGE STRICKLER: I am sorry to  
12 interrupt you, but that raises an interesting  
13 question, and I was concerned when Ms. Saunders  
14 said that. She said that she dumped it all on  
15 you and it was very expensive, I think that's  
16 when you started talking about pulling your hair  
17 out in the living room.

18 And there's no reason why that had to  
19 be done. That could have been done in-house. It  
20 could have been done with an outside contractor.  
21 But it was given to you.

22 THE WITNESS: You're mistaken. I am

342

1 so sorry, that could not have been done in-house.

2 JUDGE STRICKLER: Yeah, the choice to  
3 take evidence of whatever quality and have the  
4 attorneys compile the information is a choice  
5 that the client makes. It is still the client's  
6 discovery. And the adversarial party is free to  
7 do with it as it may, and you are free to explain  
8 why it may be bad information, but it was still  
9 discoverable pursuant to our order. And let the  
10 chips fall where they may.

11 JUDGE BARRETT: It's water way --  
12 excuse me, it's water way over the dam right now  
13 whether we required it or not. The fact that we  
14 were incredulous in 2014 that the company didn't  
15 have electronic data for this time period did not  
16 require MPAA to create it, but MPAA in its own  
17 interest as much as in ours, I think, and in the  
18 interest of these proceedings, did the best it  
19 could, okay?

20 Now, the fact that MPAA created a  
21 spreadsheet and the fact that MPAA's witness  
22 supplied data that didn't necessarily correlate

343

1 to the spreadsheet, those are -- you know, those  
2 are issues that never the twain shall meet.  
3 There's a spreadsheet out there that combines  
4 everything they could put their hands on, and  
5 there are appendices to this witness's written  
6 testimony based on paper.

7 MR. BOYDSTON: Can I just have ten  
8 seconds?

9 JUDGE BARRETT: Am I correct? Yes.  
10 And then we are going to leave because I have an  
11 appointment.

12 MR. BOYDSTON: Well I guess I can't  
13 have ten seconds.

14 JUDGE BARRETT: No, you may, Mr.  
15 Boydston.

16 MR. BOYDSTON: Why didn't they give us  
17 a copy of Whitt's hard drive? Why didn't they do  
18 that? Why did they invent this other thing when  
19 what we were asking for was exactly that?

20 JUDGE BARRETT: You know, I think --  
21 well, I don't know, Mr. Boydston --

22 MR. BOYDSTON: Judge Strickler was

344

1 about to ask counsel.

2 JUDGE STRICKLER: No, I believe that  
3 counsel responded --

4 JUDGE BARRETT: The hard drive was on  
5 a late twentieth century gadget.

6 MR. BOYDSTON: So?

7 JUDGE BARRETT: You know, I don't know  
8 why they didn't.

9 MR. BOYDSTON: Those records would  
10 have been responsive.

11 MR. OLANIRAN: I think I've explained  
12 about as much as I can, and so two things that I  
13 wanted to address. One is the status of Exhibit  
14 341. I would like to move to admit 341, and then  
15 I have a quick housekeeping matter.

16 MR. BOYDSTON: I have no further  
17 questions for the witness. My objection remains,  
18 obviously.

19 JUDGE BARRETT: Thank you. Exhibit  
20 341 is admitted.

21 (Whereupon, the above-referred to  
22 document was received into evidence as MPAA

345

1 Exhibit 341.)  
2 JUDGE BARRETT: And housekeeping  
3 matter, Mr. Olaniran?  
4 MR. OLANIRAN: The housekeeping matter  
5 is that Ms. Saunders has an extensive travel  
6 schedule coming up. I have spoken to Mr.  
7 Boydston earlier today, and he had agreed that  
8 Mr. Saunders could come on after we'd completed  
9 the cross-examination of Mr. Galaz.  
10 And Ms. Saunders wanted to be able to  
11 testify first thing in the morning since first  
12 she has to -- she doesn't live in town, she has  
13 to travel a couple hours to get to her place of  
14 residence and then pack, feed the dogs and the  
15 horses and the chickens or whatever before she  
16 heads out to Europe.  
17 And I was really wondering if it's  
18 possible -- I know that we're in the middle of  
19 Mr. Galaz's cross-examination -- if I could  
20 examine, if Ms. Saunders could be examined first  
21 thing tomorrow morning.  
22 MR. BOYDSTON: No objection.

346

1 MR. MACLEAN: No objection.  
2 JUDGE BARRETT: Okay. We'll do that,  
3 starting at 9 o'clock.  
4 MR. MACLEAN: Your Honor, may I  
5 instruct my witnesses that they need not come  
6 until after lunch tomorrow?  
7 JUDGE BARRETT: I think that's  
8 acceptable.  
9 MR. BOYDSTON: Well, Your Honor, I am  
10 hoping that this won't go on much longer. Could  
11 you have one of them come before lunch just in  
12 case?  
13 JUDGE BARRETT: That's probably the  
14 better part of valor, Mr. MacLean. Have at least  
15 one come. Pick one.  
16 MR. MACLEAN: How about, can I at  
17 least tell them 11 or something to that effect?  
18 MR. BOYDSTON: Why don't we say 10:30?  
19 (Laughter.)  
20 MR. OLANIRAN: And may Ms. Saunders be  
21 excused?  
22 JUDGE BARRETT: For this evening yes.

347

1 And, you know, if -- well I don't -- never mind,  
2 I am going to stop talking while I still can.  
3 MR. OLANIRAN: Well she'll be here 9  
4 o'clock tomorrow morning, Your Honor.  
5 JUDGE BARRETT: Nine o'clock tomorrow  
6 morning. Thank you all.  
7 MR. OLANIRAN: Thank you, Your Honor.  
8 MR. BOYDSTON: Thank you.  
9 JUDGE BARRETT: And off the record.  
10 (Whereupon, the hearing went off the  
11 record at 4:40 p.m.)  
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16  
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18  
19  
20  
21  
22

- A**  
**A&E** 76:6 185:17 186:7  
 186:9,14  
**a.m** 1:19 5:2 78:21,22  
 112:3,4  
**ABC** 182:2 191:1 205:4  
 219:13,21  
**ability** 12:21 146:22  
 169:9  
**able** 16:6 21:8 49:18  
 93:22 137:6 161:7  
 192:15 230:1 275:17  
 305:17 321:16,17  
 322:9 345:10  
**above-entitled** 1:18  
 112:2 141:3 265:4  
**above-referred** 105:2  
 112:10 121:13 123:21  
 135:1 154:9 155:22  
 160:12 162:14 167:17  
 170:17 171:2 172:15  
 172:21 180:14 187:20  
 194:18 195:4 200:17  
 201:19 204:2,8 206:6  
 206:15 208:13,19  
 210:4,11 213:8  
 214:22 216:8,14  
 218:8,15 220:20  
 238:13 239:18 242:4  
 251:11 256:11 259:20  
 261:7 279:19 344:21  
**Abrahams** 122:6  
**absence** 223:8 249:14  
**absolutely** 24:14 148:8  
 158:21 166:8 193:15  
 194:2,6 196:10 316:4  
 316:14 324:19 328:19  
**Academy** 181:3,5,11  
 182:11  
**accept** 6:9  
**acceptable** 223:5 346:8  
**accepts** 147:2  
**access** 229:14 230:16  
**accident** 16:11 17:15  
**accompanying** 49:8  
**accorded** 263:19 264:3  
 282:1,22 283:11  
**account** 53:14 76:21  
 77:17 87:19,20  
**accounting** 20:19  
 101:20 102:5 113:6  
 223:8 337:8  
**accounts** 72:15 73:4,17  
 79:8 82:20  
**accurate** 11:16,17  
 94:19 292:8,12,13,14  
 328:16,18  
**Achievement** 202:7  
**acknowledge** 301:22  
**acknowledges** 147:11  
**acknowledgment** 37:10  
 48:10,11 51:10 52:8  
 52:11,19 54:2 57:20  
 59:19 63:14 66:20  
 69:4,16 75:5  
**acknowledgments**  
 48:18,20 51:13 57:16  
**acquired** 20:21 21:19  
 22:11 321:7  
**acquisition** 21:2,9  
**acronym** 159:1 296:22  
**acting** 153:12 190:4  
**action** 33:7,15  
**actual** 97:14 137:8  
 146:22 147:12 154:4  
 157:9 298:5,6 328:17  
**add** 273:5 323:2 324:17  
 330:3  
**addition** 5:13 80:14  
 118:10 147:15 290:17  
 290:20 293:7  
**additional** 51:10 61:21  
 63:16 127:7 128:13  
 136:1 164:20 244:8  
 278:22 284:9  
**address** 36:14 50:5  
 60:1 81:11 117:8,14  
 271:15 309:19 344:13  
**addressed** 14:18  
 140:15 225:5 250:3  
**addressee** 122:3,5  
**addresses** 49:20  
 109:18  
**addressing** 205:3  
**adequate** 77:4  
**Adler** 13:8,9,10  
**admissibility** 169:14,21  
 272:2  
**admissible** 169:22  
**admission** 30:21 32:19  
 103:19 109:8 260:18  
 261:2 273:2 278:9  
**admit** 44:9 47:12 80:4  
 104:22 111:17 151:17  
 155:15 162:8 194:14  
 241:21 244:5 260:11  
 305:14 315:7 344:14  
**admitted** 19:14 32:14  
 33:1 44:15 46:11  
 47:16 53:22 54:4  
 104:13 112:6 123:2  
 123:20 134:19,22  
 143:11 155:21 162:13  
 164:18 169:18 170:16  
 172:14 175:3 176:2  
 192:19 194:16 196:17  
 200:16 201:12 203:16  
 204:1 206:5,5 208:12  
 210:3 213:7 216:3,7  
 218:3,7 220:15,19  
 231:21 232:2 238:5,8  
 239:12,17 242:3  
 251:8 252:19 256:10  
 259:15,19 260:22  
 261:6 271:2,2 273:1  
 276:12 279:13,18  
 297:16 299:12,13  
 304:11 344:20  
**admonish** 326:11  
**adopted** 87:2  
**adversarial** 342:6  
**advised** 231:8  
**Advisor** 141:7  
**affidavit** 34:17 35:1  
 182:22  
**affidavits** 170:6  
**affiliated** 265:20  
**affirm** 243:14  
**affirmed** 147:19 243:15  
**AFI** 3:18 202:6,8 203:9  
 203:10,10  
**afternoon** 129:7,17  
 130:8 132:1,5 141:9  
 141:10,12,16 227:20  
 280:2,4,7 281:14  
**agency** 110:17 150:14  
 152:17 153:5 337:20  
**agent** 24:2 133:5,16  
 136:2,6 137:15  
 139:20,20 144:9,20  
 145:2,5 147:3,9  
 150:10 151:1 153:11  
 153:12,13,19 154:1  
 154:20 156:9,14,15  
 156:21 157:20,21  
 159:15 160:1,6,7  
 174:21 175:1 180:9  
 182:5 188:15 189:20  
 190:4,11 263:12  
 268:3,18,19 269:19  
 269:20 282:14,16  
 283:4,18 284:1,6,10  
 285:3 287:4 295:4,12  
 296:2 300:12,20  
 301:4,17,19 302:2  
 303:10,10,13 320:3  
**agents** 139:8,11,13  
 143:18,22 152:11  
 174:3 280:18 281:19  
 281:22 282:2 284:19  
 285:1 337:15 339:19  
**aggregate** 152:6  
**ago** 22:18 29:1 58:7  
 70:3,8 73:10 77:13  
 92:5 102:1 124:7  
 150:1 174:16 191:6  
 307:21 323:15  
**agree** 41:13 72:10  
**agreed** 129:16 130:3  
 142:6 261:21 345:7  
**agreement** 4:1 37:2,3,5  
 37:11,11 51:6,6 61:14  
 61:16 99:12 100:18  
 136:11,12,15,18,22  
 144:20,22 145:4,18  
 146:11,14,16 189:1  
 233:21 235:18 236:17  
 236:22 237:1 239:1,3  
 258:9 260:6 262:3  
 263:4 265:12,16  
 283:10 296:1 299:16  
**agreements** 51:4  
 101:15 105:8,14,19  
 106:4,8 107:3 118:20  
 211:19,20 260:16  
 263:3 270:1  
**ahead** 5:17 29:7 32:4  
 62:3,5 64:10 69:22  
 70:20 108:5 194:17  
 219:5 225:9 231:18  
 299:21  
**Ahh** 165:15  
**aid** 272:6  
**air** 233:12  
**allegation** 249:18  
**alleged** 110:11,18  
**Allied** 217:16 319:7,8  
**allocation** 87:4  
**allow** 83:12 234:10  
 248:6  
**allowed** 26:22 137:3  
**allowing** 273:21  
**altogether** 60:21  
**ambiguous** 301:1  
**America** 2:18 135:15  
 137:19 245:13  
**American** 184:12  
 202:11 207:13 219:13  
 258:13  
**Americas** 150:6,7  
 166:16 173:6,8,11  
**ample** 77:4  
**and/or** 117:8,14 123:15  
**Andre** 195:2 197:3,6



- Angeles** 2:5  
**animated** 5:5 235:3  
**Animation** 205:11  
**answer** 38:15 62:22  
     63:1 64:14 71:2 93:22  
     99:20,22 100:1  
     102:17 112:22 122:10  
     123:15 199:3 205:20  
     229:18 267:7 294:6,8  
     324:10  
**answering** 71:2,3  
     101:10 149:2  
**answers** 199:1  
**answers** 111:4 149:11  
     274:10  
**Anthony** 206:12,22  
     207:2  
**anticipated** 130:16  
**anticipating** 121:10  
**anybody** 167:9 295:8  
     314:16  
**anymore** 58:4 120:20  
     199:3  
**anyway** 52:12 65:22  
     185:21  
**AOL** 53:13  
**apart** 266:6 277:19  
**apologies** 211:8  
**apologize** 32:13 62:20  
     64:2 79:2 186:15  
     198:9 213:11 307:20  
**apology** 213:15  
**apparent** 154:20  
**apparently** 81:16 193:6  
     194:17 230:8  
**appeal** 13:22  
**appear** 84:16 137:12  
     166:16 178:15 283:12  
     283:12 292:16,17  
**APPEARANCES** 2:1  
**appeared** 10:17 71:8  
     74:18 174:17 184:19  
     283:17  
**appearing** 208:8  
**appears** 73:21 163:4,12  
     163:21 164:14 167:5  
     167:14 171:5 175:11  
     180:19 184:17 202:19  
     206:11 209:5 214:5  
     214:13 216:19 218:13  
     232:8 250:15 283:21  
     297:13,14 304:7,18  
     319:10  
**append** 318:8  
**appended** 293:2 318:8  
     319:11 325:16
- appendices** 288:14  
     290:21 324:19 329:4  
     329:6,10 337:7,13,21  
     343:5  
**appendix** 183:5 184:18  
     189:12,18 292:6  
     293:14 294:2 327:14  
     329:10,10 330:19  
     334:4,4,15 336:17,18  
**applies** 305:21  
**appointment** 343:11  
**appreciate** 62:17 130:9  
     131:3 132:6  
**approach** 41:1 50:8,18  
     53:2 77:21 165:9  
     210:22 213:16  
**appropriate** 86:3 188:5  
     251:7 278:5  
**approximate** 246:15  
**approximately** 143:14  
     262:12  
**archaic** 336:11  
**arduous** 329:21  
**argue** 245:17 274:17  
**arguing** 340:12,15  
**argument** 85:20 86:9  
     86:15 146:4 273:11  
     276:20 341:4,4  
**argumentative** 88:13  
     89:6 96:19  
**arguments** 274:1,3  
**Arnold** 2:13 34:18 35:4  
     35:6  
**Arnold's** 34:22  
**array** 252:8  
**articulate** 53:5 325:10  
**Arts** 181:3,5,11 182:11  
**aside** 91:9  
**asked** 5:19 17:2 21:7  
     27:2,3 47:3 54:11  
     71:2 82:20 97:21  
     101:9,10 108:10  
     112:21 118:19,21  
     124:19,21 168:13  
     177:1 260:18 274:4,4  
     302:4 304:16 308:21  
     311:22 314:7 329:22  
**asking** 11:14 59:18  
     64:13,16,21 65:2 70:9  
     70:13 82:22 92:19  
     104:12,15 130:10  
     131:16 193:5 198:15  
     255:12 257:15 261:1  
     274:12 278:9,18  
     279:2 300:2 302:6  
     313:5,6 327:14
- 343:19  
**aspect** 16:15 142:13  
     239:5  
**assert** 76:17 249:9  
**assertion** 56:6  
**assess** 322:14  
**assist** 192:2  
**assistant** 17:16 319:17  
**associated** 137:17  
     151:6 188:14 209:19  
     318:7  
**Association** 2:18  
     135:15 137:19 220:2  
     245:13  
**assume** 7:13  
**assuming** 8:1  
**ATAS** 181:14,14 182:10  
**attach** 54:6  
**attached** 75:5 115:12  
     169:3 175:14,16  
     220:10 244:12 277:2  
     310:18 331:8 335:12  
**attachment** 4:16 45:16  
     103:7,19 104:13,15  
     104:22 105:3,6,12  
     115:17,22 120:14  
     121:3 180:4 298:7  
     302:9  
**attachments** 103:6  
     169:20 170:6,10  
**attacked** 185:17 230:12  
**attempt** 61:22 63:12,17  
     108:3 111:16 123:14  
     123:14 281:18  
**attempted** 257:20  
**attempting** 31:12 38:7  
     38:19 62:20  
**attempts** 69:7  
**attend** 141:1  
**attention** 26:8 151:18  
     196:9 210:15 217:19  
     220:3 241:7 243:12  
     252:15 262:6 290:11  
     304:1 337:22 338:2  
     339:22  
**attest** 184:16,19  
**attested** 212:1  
**attesting** 148:9  
**attorney** 141:7 177:22  
     178:1  
**attorneys** 36:1 342:4  
**attributable** 219:21  
     251:1  
**attributed** 146:19 154:3  
     157:5,17 161:20  
     168:12 184:12 188:8
- 196:4 203:8 207:13  
     212:18 219:14 220:1  
     221:16,18 222:1  
     234:18 236:12 243:9  
     244:17 257:8,19  
     269:5 280:17 281:19  
     281:22 284:19 285:1  
     285:7 296:15  
**attributing** 180:8  
     181:21 221:19 302:19  
     302:21  
**audible** 126:4  
**Audio** 156:16 157:11  
     168:9  
**Australia** 153:7,9,13  
     156:18 159:7  
**Australian-based**  
     296:19  
**authenticate** 305:18  
**authenticity** 130:4  
**author** 50:1 301:12  
**authored** 49:15 148:6,8  
     203:10  
**authority** 24:6,15 26:4  
     26:11 56:8 111:1  
     198:3 294:11  
**authorize** 116:20  
**authorized** 45:21 91:6  
     91:11 198:2,6,16  
     200:2,4,7 201:1 255:9  
     295:8 300:20 320:3  
**availability** 315:5  
**available** 229:7  
**Avalon** 155:10 156:11  
     156:21  
**AVCS** 156:12,13,16,21  
     157:14 158:1 168:9  
     168:15 171:17,19  
     298:2  
**Avenue** 1:17 2:5  
**awaiting** 275:7  
**Award** 3:18 202:7  
**awards** 181:15,16,17  
     181:17,17,18 182:8  
     183:1,2,4,4,16,16  
     184:7 188:17 190:17  
     191:12 192:9  
**aware** 6:14 106:2 117:6  
     120:10 124:11 159:14  
     188:7 222:3 233:9  
     261:11 295:21 296:6  
**awareness** 148:11  
**Azteca** 4:5 259:1 260:8  
     263:15,21 264:3,5,11

- b** 183:5 191:10 195:2  
 290:21 292:6 293:14  
 294:2 324:19 327:14  
 329:10 330:19 334:4  
 334:15,20 336:18  
 337:7,21  
**back** 15:14 42:18 58:10  
 60:1 70:7 73:6 78:21  
 84:15 107:5 110:13  
 110:15 111:14 120:17  
 128:12 141:14 144:16  
 149:5 161:15 184:17  
 219:19 231:21 263:14  
 267:22 285:9 299:17  
 306:1 327:2 333:3  
 340:17  
**background** 13:21  
 74:16 75:2 76:9,11  
 261:19  
**backup** 51:3  
**bad** 135:7 342:8  
**baggage** 85:15  
**balance** 143:21  
**ball** 320:9  
**ballpark** 225:16,17  
**banking** 20:20  
**banned** 235:2  
**Barbara** 202:7  
**BARNETT** 1:20  
**BARRETT** 5:3,18 6:2,6  
 7:1,17,18 8:3,22 9:7  
 16:3,18 17:2,11 18:18  
 18:21 19:3,13 25:15  
 26:19 27:2 28:10,13  
 29:2,6,20 30:5,12,19  
 31:10,15,21 32:3,15  
 32:22 33:8,22 35:2  
 38:3 41:2,10,12,15  
 42:3,9,12,15,19 43:7  
 43:12 44:15,20 45:7  
 45:13 46:6,9 47:16  
 54:11,16 56:20 57:6  
 62:16,21 63:5 64:5  
 67:13,17,20 68:2,19  
 71:6 74:12 77:22  
 78:14,17 79:1 81:1,6  
 82:16,22 83:3,10  
 84:11 86:5 87:10  
 88:14 89:7,17 90:4,12  
 90:17 95:4 96:20 98:4  
 99:19 101:11 104:12  
 104:17,21 108:5  
 110:8 111:22 112:5  
 112:13 117:21 118:6  
 120:21 121:2,8,12  
 122:3,8 123:16,19  
 125:11,14,17,20  
 126:2,5,9,13,16,19,22  
 127:4,7,19,22 128:6  
 128:10,14,20 129:4  
 129:13 130:14 131:1  
 131:9,22 132:8  
 133:21 134:12,16,19  
 134:21 139:16 140:14  
 140:19 141:6 142:3,9  
 142:17,21 149:4  
 151:21 155:11,21  
 162:13 163:14 165:10  
 165:13,18 166:5,20  
 167:10 170:12,16  
 172:13 174:9 175:2  
 176:1,10,18 177:9  
 182:19 183:10,17,21  
 187:1,5,12,18 188:3  
 191:4 193:20 194:4  
 194:15 196:15,21  
 198:11 199:2 200:10  
 200:15 201:11 203:22  
 206:4 207:22 208:11  
 210:3 211:2 213:6,17  
 214:7,12,18 216:6  
 218:6 219:4 220:18  
 223:11,17 225:9  
 226:8,19 227:8,15,18  
 228:2,6,14 231:18  
 232:1 238:4,7 239:16  
 242:2 243:18,21  
 244:6 245:4 246:9  
 250:21 253:12 256:9  
 259:18 260:14,17,22  
 261:3,6 264:17 265:2  
 265:7 266:18,22  
 270:11 271:21 272:19  
 274:15 275:4 276:3  
 277:18 278:19 279:9  
 279:18 280:1 282:12  
 299:11,14 301:13  
 302:11 306:21 309:18  
 310:9 313:14,20  
 314:2,10,22 315:19  
 316:2,5,10,12,15  
 320:6,11,16 321:10  
 321:15,22 322:17  
 323:14 324:13,16  
 325:19 326:20 327:5  
 335:11,15,17 342:11  
 343:9,14,20 344:4,7  
 344:19 345:2 346:2,7  
 346:13,22 347:5,9  
**base** 223:16 321:18  
**based** 41:20 62:2  
 112:18 127:12 137:1  
 141:9 146:20 152:7  
 153:6 154:15 163:20  
 170:12 174:16 184:5  
 184:6 209:17 246:2  
 250:15 313:10 315:10  
 322:10 329:16 334:7  
 343:6  
**basement** 314:14 323:8  
 324:1  
**bases** 33:5 86:12 87:6  
**basically** 8:9 17:16  
 20:18 50:1 75:11  
 115:6 181:14,18  
 262:1 266:10  
**basis** 42:4 84:6 85:3,6  
 86:7 87:6 126:3  
 183:11 184:2 199:19  
 199:21 222:8 223:19  
 241:17,18 245:1  
 294:17 303:6 306:22  
 307:4 313:12 337:7  
**batch** 66:21  
**Bates** 305:10  
**BBC** 3:16 150:6,6,12,17  
 150:18 166:15 173:5  
 173:7,20,22 174:2,18  
 177:6,11,20 178:9,19  
 179:17 180:2  
**BCC** 173:11  
**Beast** 3:19,20 209:9  
 210:18,19  
**beg** 5:4 19:6 135:7  
 228:3 270:12 279:10  
 308:4  
**began** 25:9  
**beginning** 25:7 129:8  
 130:1 131:13 142:1  
 238:10  
**behalf** 2:2,7,17 36:20  
 37:6 39:5 41:8 44:2  
 91:5,7,11,14 92:10  
 95:19 96:22 97:6,18  
 99:4,11 100:16  
 101:13 104:1,3,8  
 114:3 119:20 136:10  
 139:4 161:12,14  
 173:10,20 174:2  
 177:12 178:9 179:17  
 189:19 190:5,18  
 201:2 215:22 236:11  
 249:6 263:20 268:15  
 305:1 317:17 319:15  
 319:15  
**belief** 184:3  
**believe** 5:9 8:5 11:15  
 14:2 16:14 17:20  
 23:18 48:13 50:8 56:4  
 57:21 63:18 71:3  
 72:17 73:5 83:1 91:4  
 97:3,4 106:6,9 119:19  
 124:15 151:13 153:22  
 159:17 166:1 174:7  
 186:16 187:8 188:5,9  
 205:3 231:6 233:14  
 242:16 243:20,22  
 253:15 255:17 259:13  
 261:20 273:21 274:13  
 305:9 309:16 310:1  
 321:8 325:17 330:13  
 331:16 333:18,20  
 344:2  
**Bell-Phillip** 305:1  
**belong** 68:9  
**belt** 57:3  
**belt-and-suspenders**  
 50:7,18 52:13 53:2  
**BEN** 2:13  
**bench** 309:19  
**beneficial** 274:21  
**benefit** 277:5  
**benefits** 261:21  
**Benny** 9:7,9,10  
**best** 8:21 10:4 37:17  
 178:10 222:8 246:3  
 247:17 249:15,20  
 340:6 342:18  
**bet** 330:5  
**better** 23:14 51:10 63:9  
 222:11 233:13 346:14  
**beyond** 31:2 153:13  
 245:16 281:21 332:2  
**big** 11:21 12:1 150:10  
 312:5,6,9 328:2  
 329:20  
**bigger** 12:2,10  
**binder** 8:21 26:14  
 102:20 164:21 166:11  
 214:10  
**binders** 7:20 8:13 54:21  
**birth** 166:2  
**bit** 18:19 23:12,13 48:2  
 51:17 77:15 162:7  
 221:11 280:6 305:21  
 326:2 338:2  
**bite** 6:20  
**bits** 51:7 322:16  
**blank** 67:22 254:15,19  
 255:9  
**blanket** 64:14  
**blanks** 44:22  
**board** 113:7 117:3,7,9  
 117:12,18

**Board's** 117:13  
**Bob** 101:13 104:1 105:7  
 105:8,13,19 106:5,22  
 107:2,20 119:18,21  
 119:22 120:3,10,12  
 120:16,17,18,19  
 219:16  
**bold** 75:3,4  
**book** 298:4  
**bother** 62:12 167:9  
**bottom** 9:8 163:9  
 237:13,15 238:11  
 254:13 290:16  
**box** 6:5  
**boxes** 14:21 45:2,5  
 274:11 300:5,8  
**Boydston** 2:4,4 3:3,6,9  
 5:8,10,20 6:3,10 7:16  
 7:17 8:4,8,12 9:2,5,11  
 9:14,19,22 10:3,14  
 16:4,16,19,20 17:3,4  
 18:10,16 19:1,4,6,15  
 26:15,20,21 27:5 28:5  
 28:11,13 29:17 30:2,9  
 30:17 31:1,8,13,18,22  
 32:9 33:3,9 34:20  
 35:19 36:5,9 37:22  
 38:12 41:6 42:1,5  
 44:14 47:15 54:5,14  
 56:18,22 62:8,16,19  
 63:2 64:1 66:2 67:8  
 67:14,16,18 68:1,12  
 69:9 71:1 74:9,13  
 80:6 81:2 82:10 83:7  
 83:11 84:8 85:22 87:8  
 88:12 89:5,14 90:1  
 94:20 95:3,7 96:18  
 98:1 99:14 101:8  
 103:20 109:9,13  
 110:4 111:3 116:12  
 116:13 117:19 118:16  
 120:7,9 121:1,4,9,16  
 122:4,9 123:1,9,18  
 124:2 125:9 127:19  
 127:20 128:1,3,15,18  
 129:2,10 130:2,16,19  
 131:2,3 132:8,10  
 134:1,20 135:4  
 142:11,20,21 143:7  
 149:8 151:22 154:6  
 154:13 155:14,19  
 156:3 160:9,16 162:6  
 162:17 163:5,11,15  
 163:16,18 164:9,22  
 165:8,15,22 166:5,8  
 166:18 167:3,7,11,12

167:21 168:17 169:13  
 170:7,15,20 171:7  
 172:5,18 173:3  
 174:10 175:5,22  
 176:7,11,20,21  
 177:15 180:12,18  
 183:18,19 184:1  
 185:1,15 187:10,14  
 188:6 192:12 194:12  
 194:21 195:8 196:13  
 196:16 198:5,9,22  
 200:1,21 201:7,15  
 202:2 203:15 204:5  
 204:13 205:18 206:9  
 206:19 207:21 208:1  
 208:16 209:1,21  
 210:7,22 211:4 213:2  
 213:15,18,20 214:9  
 214:13,16,19 215:4  
 216:2,11,18 218:2,11  
 218:19 219:6 220:14  
 221:1 222:13 223:9  
 223:15,18 225:17  
 226:18,22 227:7,16  
 227:22 228:1 231:19  
 231:20 232:3,7 235:7  
 235:14 236:15 237:10  
 237:20 238:2,5,16,20  
 239:11,21 240:3  
 241:20 242:7,15  
 243:20,22 244:4  
 245:2,5 246:5,10  
 248:9 250:9,18  
 251:14,19 252:18  
 253:5 255:17 256:14  
 258:5 259:14 260:1,9  
 260:15,20 261:1,10  
 264:17,19 265:8,9,15  
 266:19 267:2,9 270:8  
 270:12 271:10,14,21  
 274:19 276:16 278:13  
 278:21 279:5,8,10,22  
 299:10 301:8 305:16  
 306:22 307:2 308:4  
 308:10 309:11 310:4  
 310:10,15,20 311:4  
 311:22 313:2 315:13  
 315:14,18 316:12  
 320:4 323:9 326:15  
 326:22 327:3,7,9  
 333:11 343:7,12,15  
 343:16,21,22 344:6,9  
 344:16 345:7,22  
 346:9,18 347:8  
**Boydston's** 235:13  
 313:18

**branded** 174:22  
**break** 6:17,19 79:7  
 140:20 227:17,19,20  
 230:4 264:18  
**breaking** 79:2  
**Brian** 2:4 36:11,19 96:8  
 114:6 116:10,12,13  
**brief** 235:20 278:4  
**Briefly** 28:2  
**briefs** 274:2 325:8,10  
**bring** 6:18 186:8,9  
 210:14 217:18 220:3  
 229:21 241:6 243:11  
 252:14  
**bringing** 79:3  
**brings** 7:10,12 144:7,11  
**broadcast** 189:4 221:5  
 221:7 321:6  
**broadcaster** 181:12  
 182:6 188:7 202:17  
 203:8 204:22 207:9  
 209:13 212:14,22  
 215:19 217:13 219:11  
 221:5,7 256:18  
**broadcasters** 180:8  
 188:8  
**broadcasting** 104:4  
 184:13,14 196:5  
 201:1 207:13 212:17  
 215:21 217:17 219:13  
 219:22 221:16 222:1  
 319:15  
**broke** 10:15 143:9  
 265:10  
**brought** 33:17 85:16  
 123:11,12 196:7,8  
**Buck** 158:2,4,7  
**Building** 1:16  
**bullet** 156:20  
**bunch** 6:1 78:5 340:1  
**business** 15:9 61:2  
 112:15 113:4,7 142:1  
 308:20 312:13

### C

**C** 305:12  
**C.B** 319:7  
**CA** 2:5  
**cable** 1:6 3:12 4:10 11:8  
 11:13 43:1,3,4,21  
 44:3,10 47:4,6 106:11  
 108:19 126:10 175:12  
 178:20,21 183:5  
 191:11 292:7 305:13  
 317:5 318:15  
**calculated** 150:20,21

151:5  
**calculation** 151:20  
 152:4,5,20 229:3  
 256:19 257:13  
**calculations** 257:1,14  
**calendar** 37:8 56:9  
 173:21 184:11 196:5  
 207:14 215:15,21  
 319:20 320:1  
**California** 21:14  
**call** 42:22 48:18,19  
 51:19 53:16 60:9  
 114:2 128:15 141:16  
 207:16 333:16  
**called** 10:9 15:13 16:7  
 58:10 240:8 326:1  
**calling** 116:4  
**calls** 22:8 29:18 38:1  
 61:22 63:17 66:5  
 69:17 99:15,17 129:2  
**campaigning** 309:10  
**capacity** 198:16 318:10  
**caps** 75:3,4  
**caption** 254:12,14  
**capture** 191:20  
**captured** 293:10  
**car** 16:11 17:15  
**care** 52:11 337:14  
**careful** 26:1 91:5,10  
 101:1  
**carried** 114:14  
**carrying** 238:9,11  
**case** 11:3 23:1 60:3,8  
 81:20 112:9 116:22  
 118:4 120:5 130:18  
 138:3 142:1 145:22  
 146:1 147:13 164:6  
 168:14 229:10 230:8  
 234:20 241:10 249:8  
 346:12  
**cases** 49:3 135:22  
 189:3 255:15,15  
**catalog** 13:3 61:7  
**category** 102:16 104:4  
**caught** 262:5 293:15,16  
**CBS** 182:3 184:13  
 191:1 196:5 201:1  
 212:17 215:21 217:17  
 221:15,15,15 222:1  
 319:15  
**CC** 121:21  
**CD** 1:6  
**cell** 15:12  
**century** 344:5  
**CEO** 319:8  
**certain** 16:7 24:14

136:20 147:20 149:14  
 149:14 150:7 158:17  
 171:14 174:17 180:10  
 185:22 254:1 258:16  
 281:2 313:4 314:6  
**certainly** 7:4 23:4 26:5  
 58:4 59:12 88:19  
 96:10 199:8 203:4  
 222:15 223:22 248:12  
 272:2 273:10 288:18  
**Certificate** 300:3  
**certification** 185:12  
 193:18 248:21 289:9  
 293:8 298:20,22  
 301:16 304:22 306:6  
 308:9 310:19 317:1  
 318:9 319:6,14 320:1  
 325:1 329:17,19  
 334:5,15  
**certifications** 4:12  
 191:18 276:22 277:3  
 286:1 288:3 289:6,13  
 289:15,21 290:5  
 291:4,6,7,19,21  
 292:20 294:2 298:2,5  
 298:6,11 299:3  
 301:21 305:4 306:17  
 308:12 309:8 310:2  
 310:15,16,17 312:10  
 314:9 317:2 318:21  
 319:2 325:15 328:15  
 331:7,8 334:21  
 335:13 336:5 340:11  
 340:17  
**certified** 192:5 320:2  
**certify** 339:2  
**certifying** 24:1  
**cetera** 10:20 234:15  
**CFR** 117:12  
**chagrined** 333:22  
**chain** 150:13 236:7  
**chair** 326:6  
**challenge** 225:7  
**challenged** 110:2  
 149:16 319:3  
**challenges** 26:3 128:16  
 225:6,10  
**challenging** 146:3,6  
 149:20  
**Championship** 219:15  
 219:21  
**chance** 6:20 27:20  
 276:7 304:13  
**Chandra** 8:16  
**change** 117:8,9,18  
**changed** 14:18,19

53:14  
**changes** 117:16  
**character** 33:14  
**characterization** 50:10  
 87:7 148:21 206:3  
 280:19  
**characterize** 76:15  
**characterized** 84:4  
 205:21 321:9  
**charge** 279:12  
**chart** 163:21 229:2  
 331:11  
**chase** 320:7  
**chat** 13:20  
**check** 8:2 300:5,8,12,16  
**checked** 7:21 183:7  
 293:13 302:2  
**checking** 164:9  
**checks** 301:17,19  
**chickens** 345:15  
**chief** 181:2  
**child** 166:2  
**Children** 3:13 4:9 26:17  
 34:7 36:2,21 37:20  
 39:5 40:8 41:9 46:2  
 47:7 92:14,20 94:16  
 94:18 95:12,20 96:5  
 96:16 122:18 124:12  
**chips** 342:10  
**Chiu** 173:6,14 174:13  
 174:15 177:2,16,19  
 178:4,6,13,22 179:22  
**choice** 342:2,4  
**Chrysler** 219:16  
**circumstance** 67:12  
 136:9 149:17 153:12  
 159:19 221:12 302:2  
**circumstances** 10:22  
 63:22 69:21 70:11  
 102:7 119:10 122:15  
 133:12 144:6,6,7,11  
 145:1 146:6 149:14  
 161:16,17,19 180:11  
 188:20 189:2 221:6,8  
 221:10 251:7 257:18  
 269:3 283:2 284:5,8  
 303:11 340:6  
**City** 122:6 259:4  
**claim** 4:10,11 23:16  
 24:1,3,5,8 25:1 31:3  
 37:6 40:9 43:1,21  
 44:2,10 46:19,22 47:4  
 47:5 62:6 75:6,12  
 91:14 92:7,15,22 93:5  
 96:22 97:6,17 99:4,11  
 100:16 101:5,13

102:13 103:22 104:8  
 106:11,22 107:7,10  
 107:13,17,20 113:18  
 115:17 117:16,17  
 133:1,10 136:2,19  
 144:8 151:5 161:8,12  
 161:14 173:19 174:2  
 177:11,12 182:1  
 183:14 184:4 185:3  
 186:4 188:21 189:14  
 189:20 190:6,12  
 191:6 193:19 201:1  
 202:18 209:14 212:15  
 215:19,22 217:4,13  
 219:12 234:16 239:8  
 243:5 244:11 245:15  
 245:20 249:5 265:20  
 266:11 267:19 295:7  
 307:7 318:11,12,15  
 318:19 341:9  
**claimant** 24:3,7,15 26:9  
 34:8 47:8 58:18,20  
 59:2 62:6 63:20 64:9  
 64:17 65:9,9,18,19  
 67:7 70:1,19,20,21,22  
 71:14,17 75:17 91:15  
 97:1 99:12 100:16  
 104:8 115:1 117:4  
 133:11,14 151:7  
 152:9 155:2,3 157:2  
 158:11,12 171:13  
 181:6 189:2,19 190:5  
 191:7 192:5 202:6,12  
 204:19 205:10,16,17  
 209:11,20 222:1  
 224:3 233:8 242:21  
 245:19 252:1,2,4  
 277:15 282:16 287:4  
 287:13 299:4 318:10  
 328:4 329:8 332:15  
**claimant's** 115:7,15  
**claimants** 2:8 3:12 4:6  
 4:14 10:18 11:16 12:4  
 20:15 22:2 45:20 46:3  
 48:9 49:9 50:17,19  
 52:4 58:1,3 59:9,13  
 60:20 68:8,9,11,15  
 71:9 72:11,15,19 73:2  
 73:18 77:5,5 79:9  
 80:9 81:21 88:4 89:13  
 91:3,6,11 92:11  
 109:17,20,21 110:11  
 110:15,18,18 111:1,9  
 116:20 117:7 119:1,4  
 119:5 125:2,6 137:22  
 139:4 143:15,22

150:22 169:2 256:16  
 257:2 269:10 277:2  
 282:8,9,11,13 293:5  
 294:12 318:6 319:3  
 324:21 327:17,17,18  
 327:19 329:2,3,13,18  
 330:22 331:22 332:16  
 339:1 340:18  
**claimed** 4:6 94:18  
 95:13,15,16,19 96:16  
 136:10 137:10 139:7  
 139:10,12 144:2  
 145:16 147:13 150:9  
 150:12 171:17 179:16  
 184:8 186:9,10,12  
 188:14 190:17 192:8  
 193:16,17,18 207:8  
 221:22 236:10,12  
 252:11 256:17 257:3  
 257:4 264:2,4 267:6  
 268:2 269:4,10  
 281:18 283:1 285:16  
 286:2 287:14 293:5  
 296:13 325:15  
**claiming** 111:2 183:3  
 185:10,13 191:7  
 204:22 244:19 291:18  
 340:18  
**claims** 22:10,13 23:7,20  
 24:11,16 25:2 26:2,10  
 33:20 39:5,15 40:4  
 41:7 45:17 56:9 76:17  
 89:4 91:5,10 92:10  
 99:10 102:10 110:1  
 115:12 119:20 124:3  
 124:14 126:9 128:8  
 128:17 135:17 137:18  
 137:21 138:1 139:5  
 146:9,19 148:3  
 149:19 151:1 152:6  
 152:17 155:7 168:22  
 173:10 177:6 178:9  
 179:17 185:19 208:8  
 226:10 249:3 268:16  
 277:8,22 278:1 288:1  
 294:10 317:4 337:18  
**clarification** 68:22  
 162:10 189:6 247:4  
 284:18 300:18 336:4  
**clarify** 24:22 100:15  
 133:6 138:6 163:20  
 165:3 179:7 190:19  
 190:20 223:16 288:22  
 334:14  
**clarifying** 25:5 228:17  
**Classic** 219:16

- clause** 238:10  
**clear** 12:22 32:14 33:4  
 50:16 112:14,22  
 116:6 123:20 129:19  
 134:15 145:10 155:17  
 178:18 186:21 253:6  
 262:20 279:14 280:12  
 289:7 293:21 301:3  
 329:9  
**clearing** 130:14  
**clearly** 52:20 61:8 84:9  
 87:11,18 91:19 98:9  
 309:1 333:15  
**clerk** 42:13,14 43:5  
 104:22 165:19  
**clerk's** 43:13  
**client** 92:1 113:3,13  
 114:4,9 181:6 207:4  
 219:9 233:19 309:14  
 327:1 342:5  
**client's** 37:13 342:5  
**clients** 14:15 49:19  
 58:9 92:3 114:1 158:8  
 259:2 279:6  
**CLIFFORD** 2:9  
**clock** 255:18  
**close** 131:8  
**closed** 299:19  
**closer** 6:21 18:19  
**co-copyright** 205:16  
**coach** 62:17  
**Cochran** 3:17 180:20  
 180:20 184:10  
**coffee** 79:3  
**colleagues** 112:1  
 278:20  
**collect** 90:15 153:7,11  
 159:7 160:1 204:22  
 263:20 330:14  
**collecting** 120:11 162:2  
**collection** 150:16  
 156:16 168:9 296:14  
 322:15  
**Collections** 136:11  
 138:16,17,17,18  
**collectively** 37:4  
**collects** 159:10  
**colored** 317:11  
**column** 136:1,5 154:22  
 155:6,9 156:7 284:3,9  
**columns** 189:16  
**combination** 155:2  
**combinations** 151:5  
 152:9 155:4 163:2  
 257:6  
**combines** 303:9 343:3
- come** 91:21 128:12  
 129:16,21 130:8,9  
 132:3 138:14,20  
 142:7 150:3,11 186:1  
 196:1 243:2 244:21  
 279:7 306:9,10  
 311:18 313:3 329:5  
 333:7 340:12 345:8  
 346:5,11,15  
**coming** 76:15 345:6  
**command** 178:15,17  
**commencement**  
 129:15  
**comment** 30:4 130:22  
 214:15  
**comments** 168:5  
 271:17 309:19  
**common** 125:7,7,8  
**communicate** 331:2  
**communicated** 14:11  
 15:22 77:10 168:10  
 177:2 178:4,5 197:6  
 206:13  
**communicating** 72:11  
 92:2  
**communication** 62:4  
 125:22 241:18 295:1  
 326:16,17 338:21  
**communications** 13:12  
 69:4 70:18 72:18 73:1  
 178:8,14 217:16  
 241:5,13 252:13  
 319:7,8  
**Compact** 133:20 135:8  
 136:11,15,18,22  
 137:3,13,14 138:15  
 138:16,16,17,18  
 145:14,17,18 146:11  
 146:15,21 147:3,10  
 147:11,17,20 148:2,5  
 148:10,18,18 284:7  
**companies** 184:13  
 207:13 242:18 243:1  
**companion** 314:14  
**company** 12:10 15:2  
 53:15 82:8 108:16  
 158:7 200:4 205:11  
 217:8 219:14 242:16  
 283:10,10,12,14,16  
 283:18,20,21 307:14  
 323:21 342:14  
**company's** 75:6 249:6  
**comparable** 159:5,6  
 204:11  
**compare** 337:17  
**compared** 87:13 267:22
- comparing** 338:10  
**comparison** 292:10  
**compel** 190:2 278:10  
 279:2 286:6,14  
**compelling** 276:10  
 340:21  
**compendium** 332:15  
**competing** 244:11  
**compile** 314:9 342:4  
**compiled** 321:5  
**compiling** 291:15  
**complete** 168:22 176:5  
 179:21 308:1,9 336:9  
**completed** 128:7  
 298:20 345:8  
**completely** 72:19 77:16  
 77:18 79:9 201:14  
 276:8 289:7 337:4  
**completeness** 175:19  
**complied** 339:16  
**complies** 339:17  
**comply** 336:14 339:6,9  
 339:12  
**compound** 64:2  
**comprise** 203:12  
**compromised** 87:22  
**computer** 306:15  
 310:18 320:13 328:11  
**computer-wise** 224:22  
**concept** 328:18  
**concern** 59:12 271:15  
 277:20  
**concerned** 59:4,11  
 142:10,18 341:13  
**conclude** 297:3  
**concluded** 236:1  
**Concluding** 297:8  
**conclusion** 38:1,14  
 99:15,18 129:22  
 237:14 243:3 244:21  
 311:19  
**conclusions** 273:9  
**condition** 322:14  
**conduct** 120:5  
**conducted** 321:4  
**confer** 111:22  
**conference** 6:14,15  
 140:22  
**confident** 324:14  
**confidentiality** 299:16  
**configure** 321:18  
**confirm** 48:21 144:17  
 241:9 246:19  
**confirmation** 49:8 50:9  
 50:15,20 57:10 70:19  
**confirmations** 48:4,8  
 48:14 56:14  
**confirmed** 207:19  
 241:11  
**confirming** 152:17  
 318:10,12  
**conflict** 249:4,10,11,18  
**conflicting** 208:7 277:8  
 277:21,22  
**conformity** 8:22  
**conformed** 98:2,3 283:5  
 332:20  
**confusing** 138:7  
**confusion** 129:19  
 244:15  
**Congress** 1:16  
**connect** 137:3 328:2,3  
**connected** 312:7  
**connecting** 190:22  
**connection** 22:18 33:14  
 33:19 110:12 111:10  
 171:11 181:12 241:15  
 270:2,4,5,7  
**consequence** 253:8  
**consider** 76:20 274:20  
**consideration** 323:10  
**considered** 52:22 53:6  
 53:8 56:14,15 273:1  
**consistency** 98:15  
**consistent** 12:14  
 211:18 235:18,22  
 244:1 246:7  
**consistently** 99:7  
**constant** 338:21  
**constitutes** 340:22  
**consultation** 114:11  
**contact** 14:21 15:8 52:5  
 53:15,17 58:21,22  
 59:3 60:10 62:11,13  
 62:13,15 64:19 65:6  
 69:8 96:14 97:4 98:17  
 109:17  
**contacted** 14:14 70:6  
**contacting** 59:13  
 108:17  
**Conte** 2:5  
**contemplate** 67:4  
**content** 174:7,8,12  
 175:4 182:4,5 184:15  
 255:4 256:1  
**contention** 105:7,13  
**contents** 3:1 133:22  
 222:6 223:7 228:21  
 248:2 249:21 250:2  
**context** 196:1,2 200:5  
 250:15 291:21 294:7  
 296:4 327:13

- continuation** 105:18  
 106:7  
**continue** 110:2 142:22  
 176:15 237:6 313:6  
**continued** 83:20 214:16  
 261:22 308:17  
**continues** 236:11  
**continuing** 237:15  
 247:11 277:14  
**contract** 4:4,5 17:6,9,9  
 18:2,2,13 22:20,21  
 61:2 67:11 92:18 97:2  
 97:7,14 98:22 99:6  
 101:5,6 104:9 110:16  
 113:16 114:8 138:2  
 178:19 212:20 217:10  
 234:4,11 257:11  
 259:8 261:22 264:7  
 266:11 268:22 269:1  
**contracted** 143:18  
 145:21 149:15 150:7  
 159:15,18,20,22  
 160:5 174:1 177:13  
 178:12  
**contractor** 341:20  
**contracts** 100:5 109:20  
 173:7 258:16 261:13  
 264:6  
**contractual** 144:20  
 148:10,11 207:3  
 233:16 266:14 267:5  
 283:13,19 295:1  
**contradict** 271:4 302:5  
**contradicted** 312:18  
**contradicts** 56:6  
**contrary** 202:15  
**contrast** 283:15  
**control** 309:2,14 311:17  
 336:10 337:15  
**controvert** 313:21  
**convenient** 270:21  
**conveniently** 229:1  
**conversation** 168:6  
 186:17 256:4 333:14  
**conversations** 255:10  
 331:17 332:22  
**coop** 163:12  
**cooperated** 77:12  
**cooperating** 52:20  
 77:11  
**copied** 227:10  
**copies** 5:16,19 6:7 43:7  
 191:13 288:17 290:21  
 291:6,7 314:8 318:5  
**copy** 5:22 10:4 18:1,2  
 30:8 44:2 46:21
- 122:21 164:13 166:13  
 167:4 169:4 175:14  
 175:19 180:3 191:16  
 229:20 230:1 250:6  
 275:6,17 288:2,14  
 293:7 313:14,15  
 340:10 343:17  
**copying** 229:8  
**copyright** 1:1,22 3:19  
 3:20,20 108:18 117:2  
 117:6,9,15,17 133:1,5  
 135:18 136:6 137:8,8  
 138:3,21 139:3,12  
 140:4 145:5,7,8  
 152:12,12,14 153:17  
 155:6 156:10 157:6  
 157:11 161:20 202:5  
 202:6,12 203:12,19  
 205:6,10,16 209:5  
 210:18,20 212:5  
 214:21 257:10 258:2  
 282:2 283:1 284:4,13  
 285:2,7 287:4 294:16  
 294:18 295:2,4,11,12  
 296:2,15 297:5,9,11  
 302:16,18,20,21  
 303:9,20 306:12  
 338:7  
**copyrighted** 144:2  
**copyrights** 337:19  
 339:19  
**corporation** 156:12,15  
 156:21 300:9,13  
**correct** 10:2 20:4,10,11  
 20:22 21:1,18 22:13  
 22:14 23:3,7,8,17,20  
 24:3,4,8,9,12,13 25:9  
 25:11 29:14,15 34:8  
 36:6,9 37:21 38:11  
 40:3,6,10 44:1,4,5  
 45:22 46:4,21 47:9  
 48:4,9 49:1,9 50:3  
 62:7 67:4 68:11 71:22  
 72:1 73:4,22 74:22  
 79:21 93:7,12 94:11  
 95:10,12 105:20  
 106:16 107:13,22  
 108:1,13,20,21  
 116:14 118:13 119:1  
 119:2 124:4,5,9,10  
 125:4,5 128:6,9 137:4  
 137:5,11 138:5  
 140:13 143:20 144:22  
 145:3 147:6 160:3,6  
 161:8,9 162:3 164:2,3  
 164:7 171:21 174:20
- 177:6 191:2,3 204:15  
 209:15 211:21,22  
 212:6,7 216:21  
 225:13 236:20 237:9  
 242:17 244:2 254:17  
 257:20 265:14 271:10  
 277:4 281:1,15,21  
 284:14 285:3,12,13  
 285:17,20,21 286:3,4  
 286:7,8,11,12 287:8,9  
 287:12,17,20 288:3,4  
 288:8,11,12 291:8  
 294:13,14,19,21  
 295:14 296:15,16  
 300:6,7,11,14,15  
 302:16 303:1 315:8  
 315:12,14 317:19,20  
 327:10 328:6,7 330:9  
 343:9  
**correctly** 61:13,19  
 114:18  
**correlate** 342:22  
**correspond** 20:17  
**correspondence** 22:7  
 51:2,8 65:14,17 70:3  
 74:18 97:2,10,13,15  
 97:16 98:7,17 110:13  
 110:14 120:16 146:14  
 146:17 257:12 283:19  
 303:4  
**corroborate** 249:14  
**Cosgrove** 3:21 213:13  
 213:13 216:20,22  
 217:2,3,21  
**Cosgrove's** 217:8,18  
**cost** 331:19  
**counsel** 3:13 5:16 6:8  
 7:21 10:9 20:1 30:7  
 67:15 94:17 114:11  
 116:13,18 124:12  
 177:21 271:17 275:5  
 280:5 304:9 307:12  
 307:13,19 308:20  
 309:3,14 311:10  
 312:14,14 315:1  
 320:18,21,22 324:8  
 326:12 329:16 330:9  
 331:2,4,14 344:1,3  
**count** 86:15 225:15  
**Countdown** 219:17  
**counted** 151:8  
**counter** 76:15  
**counting** 7:6  
**counts** 316:8  
**couple** 53:22 262:8  
 264:21 345:13
- couples** 133:10  
**courier** 330:14  
**course** 34:13 76:3  
 142:18 190:3 264:5  
 268:22 276:6  
**court** 6:15 16:22 169:16  
 173:17 191:5 321:12  
 327:5 331:12  
**Court's** 54:8 165:16  
**courtroom** 315:17  
**cover** 54:21 228:10  
 318:8 332:1 341:6  
**covered** 278:14  
**covering** 320:5  
**Cowan** 122:5  
**Craig** 212:9,12  
**CRB** 1:6,11 85:19 87:2  
**CRB's** 86:22  
**create** 154:14 155:17  
 160:22 161:2 162:10  
 269:11,14 271:7  
 293:1 315:12 322:9  
 335:6 342:16  
**created** 132:19 134:8  
 134:11 154:15 161:3  
 179:13 191:17 192:1  
 255:6 273:14 279:15  
 291:10 309:2 312:4  
 317:21 318:1,2 320:8  
 322:21 328:21 331:3  
 331:4,9,13 342:20  
**credibility** 87:22  
**credit** 237:6  
**credited** 236:19 241:2  
**criminal** 87:21  
**critical** 324:19  
**Critter** 233:12 234:7,9  
 234:17,18 236:5,17  
 236:19 237:3 239:9  
**cross** 3:2 17:7 128:7,13  
 253:13 280:10 309:18  
 327:8  
**cross-examination**  
 19:20 83:20 90:21  
 112:8 131:5,10,18  
 345:9,19  
**cross-examine** 230:11  
 274:9  
**cross-reference** 223:13  
**cull** 270:18 322:7  
**culled** 281:2  
**curious** 54:14  
**Current** 156:9  
**currently** 165:20  
**curtain** 338:1  
**custody** 337:15

cut 29:9 39:3 141:8  
320:7  
cyber 322:15  
cyber-judge 320:20  
cyber-lawyer 321:21  
323:11

## D

D.C 1:2 2:22 14:6 74:19  
229:22  
d/b/a 2:3  
daily 181:16 275:6,10  
275:17  
dam 342:12  
damage 323:3,6,12  
data 11:8 49:15 52:1  
181:20 279:9 283:17  
284:2 321:5,6,13,16  
323:21 324:6 332:11  
334:13 342:15,22  
database 58:18 65:21  
66:13,14 68:8,10,16  
68:20 69:15 113:5,6  
137:1,2 286:15  
287:11 306:15 307:5  
307:8,10 308:19  
309:12 311:6 312:12  
312:17 321:3 322:10  
328:21 332:4 333:21  
339:4 340:9,11  
databases 336:13  
338:18  
date 93:13 124:6 127:1  
228:12 246:11,11  
247:11 253:8 254:18  
262:20  
dated 17:10 29:12  
35:14 39:10 121:18  
123:4 174:11 247:4  
253:3  
David 1:21 211:7,14  
212:2  
day 17:21 49:17 92:3  
141:15 274:10 299:18  
days 307:21 336:7,11  
Daytona 219:17  
DC 1:17 2:11,15  
deadlines 72:8  
deal 20:15 96:5 197:9  
266:7 308:8 334:4  
dealing 48:3,8 96:9  
192:2 197:14 292:4  
295:6  
dealt 11:18 198:18  
Dear 36:19  
DeBaets 122:6

debate 310:10  
debating 296:11,12  
decade 178:6 233:14  
December 1:14  
decide 338:3  
decided 325:22  
deciding 53:1 338:6  
decision 86:22  
declarants 277:21  
278:11  
declaration 3:15,15,17  
3:17,19,21,21 4:2,3,3  
8:16,17 16:14 35:3,4  
35:6,10,13 53:21 54:2  
54:3,6,13 55:1,3,7,14  
55:14 56:13,13 103:5  
103:7 151:9,14  
158:14 162:22 165:4  
167:15,16 168:16  
169:4 170:8 171:6  
172:4 173:13,16  
174:8 175:21 179:1,7  
180:19 183:9 184:10  
184:19 195:2,18,20  
197:17 198:1 199:7  
199:20 201:12,14  
206:11 213:13 214:11  
216:19 217:22 218:13  
220:7,10 240:7  
242:10 243:19 244:2  
246:12,16 247:4  
250:1,4 251:17  
252:17 253:16 254:2  
254:3,4,13 255:5,12  
256:2 257:5 277:16  
278:3 310:6 327:15  
330:20  
declarations 169:17  
240:15 276:12 277:1  
277:3 278:9  
defective 299:15  
defense 127:21  
deficiencies 341:3  
defies 87:2  
definitely 45:5 142:8  
definition 94:22  
delayed 16:8,17 18:8  
delete 66:18  
deliberations 272:6  
delivered 6:4 123:13  
308:13 312:2 336:5  
338:19  
Deloss 98:13  
demanded 308:22  
309:12 311:6,12  
312:16

demonstrate 145:15  
205:8 281:18  
demonstrated 177:5  
demonstrates 295:6  
demonstrative 272:21  
272:21  
denied 190:2  
Denise 3:3 10:8 55:14  
deny 243:14 340:4  
depended 51:14  
dependent 145:17  
depending 131:6  
135:22 316:15  
depends 60:22 92:18  
113:12  
depicts 156:5,6  
deposition 21:13  
derived 133:6 134:9  
146:11 190:15,16  
280:22 288:19 292:4  
311:5,20 335:20  
describe 79:14 86:22  
307:3  
described 9:1 87:17  
170:2,2 226:7 246:14  
270:15 276:6  
describing 80:9 323:6  
332:19  
description 3:10 227:5  
281:20  
designated 82:8 108:16  
108:22  
designation 133:18  
desire 80:18  
desk 261:18 262:16  
desktop 227:4  
despite 85:16 212:19  
237:5  
detail 57:3 169:20  
detailed 115:19  
details 102:7 233:22  
determination 114:11  
114:13,16 124:22  
129:11 324:2  
determine 21:8 52:22  
58:14,17 69:2 137:7  
138:9 230:11 251:9  
devices 331:10  
Devotional 2:7 4:14  
91:3  
died 17:17  
difference 144:3 275:14  
338:12,12  
different 6:12 8:13  
11:16 13:18 33:16  
52:3 64:12 68:15

71:13 72:3 85:13  
111:8 138:20 143:14  
159:8,9 179:12  
181:21,22 210:20  
212:9 249:4 273:16  
282:18 284:3  
differently 77:16  
135:21 138:14  
differs 273:10  
difficult 257:16  
digging 227:21  
digitization 290:3  
digitize 191:17  
digitized 288:13,15,16  
325:17  
digitizing 289:5  
dilute 138:8  
dire 3:5 81:5,7 196:20  
196:22 316:13  
direct 3:2 10:13 28:7  
74:4 80:12 130:17  
131:5 132:9 143:6  
149:15 151:17,18  
152:15 184:18 185:7  
185:9 189:10 191:9  
192:11 200:20 231:9  
251:2 285:11,12,14  
285:19 286:2 287:22  
290:10 292:6,21  
304:1,15 316:17  
326:11  
directed 70:16 197:16  
287:10  
directing 40:7  
directly 82:3 110:20  
138:2 145:21 150:8  
159:18 174:1 180:3  
280:17 281:19 283:14  
director 317:3  
directs 39:4  
dired 255:20  
disadvantage 313:17  
disagree 144:10 241:10  
disallowed 233:4  
discourse 7:14  
discoverable 342:9  
discovered 190:1 236:9  
314:13  
discovery 40:13,17  
123:5,10 192:13  
193:9,13,15,16 203:2  
222:14 227:10,13  
228:9,13 229:12  
246:4,7 247:11,16  
264:1 272:8 279:2  
285:20,22 286:5,9

303:19 305:7,8  
 307:15,16 308:21  
 311:7,13 313:13  
 322:22 325:11 340:22  
 340:22 341:2,9 342:6  
**discrepancies** 273:6  
 340:9,13,16  
**discrepancy** 7:20,22  
 8:1,15 293:7,11,17,18  
**discretionary** 53:8  
 56:16  
**discuss** 114:6 167:22  
 168:3 171:14 173:13  
 174:12 177:19 178:22  
 195:20 207:15 220:6  
 278:19  
**discussed** 71:20  
 142:12 158:15 245:7  
 256:20 281:14  
**discusses** 122:16  
**discussing** 120:18  
 122:17 221:3 226:13  
 267:15  
**discussion** 5:5 272:13  
**disk** 229:21  
**dismissed** 76:18 77:7  
 77:13 99:10  
**display** 161:14  
**disposal** 332:12  
**dispute** 41:9 82:12  
 286:10 287:7  
**disputes** 286:6  
**disregarded** 85:20  
 86:10  
**disregards** 142:18  
**disservice** 72:16  
**distill** 157:9  
**distilled** 138:22 269:17  
**distinct** 335:10  
**distinction** 56:11 139:8  
 288:16  
**distinctly** 308:2,6  
**distinguish** 58:17  
 178:20  
**distinguishing** 53:5  
**distributed** 236:5 329:1  
 329:3  
**distribution** 1:5,10  
 108:19 233:2  
**distributor** 153:16  
 160:7,8 162:5 182:7  
 213:1 235:22 236:6  
 269:6  
**divided** 225:3  
**divorce** 262:1 266:10  
**Docket** 1:5,9

**document** 19:16 27:1,9  
 27:11,17 28:4,15 30:1  
 30:3,8,16 32:12 34:2  
 34:11,15 35:4 41:5  
 42:8 44:7,16 47:9,18  
 56:19 57:18 64:8 65:7  
 67:3 78:11 79:12,14  
 83:16 89:6,15 90:2,7  
 105:3 112:11,16,16  
 121:14 123:22 132:17  
 132:19 133:9 134:10  
 135:2 149:21 154:8  
 154:10,14 155:12,18  
 155:22 160:13,20,22  
 162:11,15 167:18  
 169:8 170:18 171:1,3  
 172:16,22 175:15  
 179:21 180:15 187:21  
 189:12 193:8 194:19  
 195:5 200:18 201:18  
 201:20 204:3,7,9,12  
 205:5 206:1,2,5,7,16  
 208:14,20 209:3  
 210:5,10,12 213:9  
 215:1 216:9,15 218:9  
 218:16 220:21 222:20  
 223:7,8 225:1 230:14  
 232:20 234:22 237:2  
 238:14,22 239:19  
 240:5 242:5,11 248:4  
 250:2 251:12 253:3  
 256:12 259:7,21  
 261:8 270:14,15  
 271:22 272:3,8,20,20  
 273:8,14,20,21  
 274:12,16,19 275:16  
 275:16 276:13,18  
 278:10 279:20 282:4  
 287:3,20 294:22  
 298:1 304:6,17 305:5  
 310:21 311:14,20  
 312:16 317:21 318:1  
 325:13 326:9 338:1  
 344:22  
**documentation** 336:22  
**documented** 284:12  
 294:17 295:10  
**documents** 7:19 41:21  
 43:8 46:10 51:14 56:5  
 56:10 63:18,19,20  
 64:3 65:13,14 77:4  
 90:16 93:9 153:21  
 158:17 169:3 192:3  
 193:10 203:11 207:6  
 210:20 229:11 230:16  
 234:14 247:19 248:2

249:4 276:21 278:22  
 280:20 293:2 295:5  
 297:13 304:7,19,20  
 315:11 325:12 337:14  
 338:9  
**dogs** 345:14  
**doing** 18:6 27:4 38:18  
 54:1 61:2 72:16  
 308:20  
**dollars** 331:20  
**door** 278:17 299:20  
**dot** 181:17,17  
**doubt** 76:22 88:20  
**draft** 199:10 255:6  
**drafted** 151:14 199:6,6  
 199:14 255:13 256:2  
**drafting** 179:1  
**Dragonball** 3:18 204:12  
 204:14,17 205:1,12  
**draw** 332:4  
**drive** 307:11,13 308:20  
 309:2 312:13 314:11  
 314:13,17 320:12,17  
 320:18,21 321:13  
 322:3,4,20 330:7,18  
 332:9,13 334:8,13  
 335:2,4,5,18,20  
 337:17 343:17 344:4  
**drives** 323:3  
**Droppers** 240:20 241:2  
 241:16  
**DTG** 252:13  
**due** 39:16,16 113:16  
 271:16  
**duly** 10:10 45:21 143:4  
**duly-authorized** 24:2  
**dumped** 341:14  
**duplicates** 229:7  
**Dutch** 150:14 159:20  
**duties** 26:2 266:6

---

**E**


---

**E-G-E-D-A** 159:1  
 296:22  
**earlier** 24:22 68:7  
 122:18 141:13 262:19  
 296:18 314:4 337:3  
 345:7  
**earliest** 158:8  
**early** 224:4 227:20  
**earner** 160:7  
**easier** 13:7 226:20  
 282:20 332:6  
**eat** 6:20,22  
**economics** 5:6  
**effect** 38:20 202:10  
 271:9 273:20 275:11  
 290:4 328:9 333:19  
 346:17  
**effort** 321:12 333:5  
**efforts** 58:15,16 59:7  
**EGEDA** 4:7 144:21  
 150:15 159:1,5,15  
 160:5,7 161:10,11,14  
 161:19,22 163:22  
 174:19 175:1 177:5  
 177:11,12 179:16  
 263:3,5,6,7,9 265:11  
 265:13,17,18 266:5,7  
 266:11,12,20 267:18  
 268:1,11,12,17,20  
 269:1,5,11,20 270:2,4  
 285:5,5 296:19,21  
 297:1 302:15,17,22  
 303:3,4,12,20,21  
**eight** 163:10 164:11,12  
**either** 6:19 26:20 40:20  
 69:12 98:22 148:9  
 156:14 175:22 223:7  
 223:11 271:1 274:13  
 318:13  
**elected** 36:22  
**electronic** 132:12  
 191:13,16 287:2,11  
 287:11,20 288:16,18  
 289:5 290:21 291:11  
 293:14 297:14 307:5  
 307:7 308:15 311:6  
 312:11 322:9 333:17  
 333:21 342:15  
**electronically** 188:19  
 227:6 229:15 270:20  
 312:4  
**eleventh** 273:14  
**eliminate** 59:7  
**else's** 163:7 166:11  
**email** 4:11,17 10:20  
 13:5 20:17 35:14,18  
 36:4,8,12,14,18 37:18  
 38:6,18 39:14 40:13  
 40:15 48:21 49:7,11  
 49:12,15,19 50:5 59:1  
 59:18,22 60:1,11,19  
 61:19,20 62:5 68:20  
 69:3,14,15 70:22 73:1  
 75:16,20 76:2,6 79:15  
 79:17 80:8 81:11,15  
 81:18,22 83:4 88:1,2  
 89:10,21 103:9,12,17  
 105:21 108:10,14,15  
 109:18 110:3 113:6  
 119:3,11,15 122:18



- emailed** 49:11  
**emails** 11:3 53:8,11,14  
 57:10,18,22 60:15  
 61:22 63:16 66:21  
 68:14,18 69:17 71:9  
 71:14,16 72:2 82:4  
 110:11,19 115:6  
 118:22 119:8  
**embarrassed** 326:2  
 333:17  
**embezzled** 17:17  
**Emmy** 181:15,17,17,17  
 181:18 182:7 183:1,2  
 183:4,4,16,16 184:7  
 188:17 190:16 191:11  
 192:9  
**Emmys** 186:11 190:22  
**employee** 171:9 180:22  
**empty** 265:11  
**ended** 179:10 210:16  
**ends** 163:8  
**engaged** 72:4  
**engagement** 48:4,8  
 57:10  
**enlighten** 226:1  
**ensure** 114:22  
**ensuring** 114:12  
**enter** 258:16 263:2  
**entered** 19:8 27:1 173:7  
 178:19 208:2 209:22  
 213:3 233:21 234:4  
 235:19 237:11 259:9  
 260:7 263:4 265:12  
 283:9  
**Entertainment** 206:13  
 206:22 207:2 209:10  
**entire** 77:12 272:7  
**entirely** 294:20  
**entities** 57:9 68:10  
 111:8 144:15 149:12  
 149:15 161:8 181:21  
 217:15 234:16 257:8  
 260:2 265:19,22  
 266:14 267:11,17,18  
 267:18,22 268:3,11  
 268:15 269:2,17  
 270:3,5,6,7,18 274:8  
 282:21 317:17  
**entitled** 4:6 35:3 117:15  
 232:9 233:11 249:5  
 277:11  
**Entitlement** 298:20  
 300:4 301:16 318:9  
**entity** 31:4 33:7 62:6  
 65:9 69:21,22 75:20  
 104:1,3 117:16  
 135:11 138:20 144:13  
 147:10 148:19 150:15  
 150:16 152:22 156:17  
 157:16 158:22 159:3  
 159:5,21 169:1 195:9  
 215:14 219:2,2,7  
 240:8 241:1 243:4  
 244:14 245:7 251:21  
 256:18 266:20 269:21  
 300:19 303:5 307:10  
 312:3,4 320:2  
**entity's** 219:12  
**entries** 281:7  
**Equator** 217:16  
**errantly** 214:3  
**erringly** 10:20 11:1 58:8  
**erroneous** 94:10  
**error** 76:3 109:6  
**especially** 168:20  
**ESQ** 2:4,9,9,10,13,13  
 2:19,19,20  
**Esquire** 122:5  
**essentially** 10:19 17:10  
 33:13 232:11 287:16  
**establish** 29:19 112:16  
 183:19 246:8 324:4,5  
**established** 111:13  
**establishes** 295:1  
**establishing** 199:21  
**estimate** 6:3 129:9  
 130:11 131:10  
**estimated** 131:12  
**et** 10:20 234:15  
**etcetera** 191:1  
**ether** 271:16,19  
**Europe** 258:14 345:16  
**eve** 324:1  
**evening** 346:22  
**event** 117:7,14 136:21  
**events** 17:19 174:20  
**eventually** 194:16  
**everybody** 77:1 147:11  
 166:11  
**everyone's** 264:20  
**evidence** 16:15 19:8,19  
 26:16,20 32:14,21  
 34:5 41:21 42:8 44:19  
 47:21 53:22 74:11  
 77:4 83:19 84:5 85:8  
 93:10 103:21 104:7  
 105:3 110:6,9,22  
 111:6,10 112:11  
 123:12,22 134:5  
 135:2 144:1,5,10  
 146:17 147:16,18,22  
 148:14,17 152:15,15  
 156:1 162:15 164:19  
 168:18 170:18 172:6  
 172:16 175:8 177:10  
 185:3,21 186:8,10  
 187:9,15 192:16  
 194:19 200:18 201:12  
 204:3 205:19 206:7  
 208:2,14 209:22  
 210:5 213:3,9 216:9  
 218:9 220:21 222:8  
 222:20 237:11 238:15  
 239:20 242:6 246:3  
 247:17 249:16,17,20  
 250:19 251:13 256:13  
 259:22 261:9 263:19  
 263:22 266:13 267:4  
 272:12 279:20 291:22  
 297:3,6 299:12  
 309:10 310:14 313:10  
 342:3 344:22  
**evidencing** 64:8  
**evidentiary** 73:21 74:19  
 74:21 76:21 111:12  
 247:16  
**exact** 186:2 252:22  
 283:15 309:2  
**exactly** 32:5 49:14 82:5  
 86:15 94:8 95:7 100:4  
 100:6 101:16 169:5  
 169:10 185:16 186:22  
 198:12 209:16 244:20  
 314:21 325:9 329:21  
 337:2 341:7 343:19  
**examination** 10:9,13  
 17:8 28:7 81:7 118:15  
 130:17 132:9 134:3  
 143:6 200:20 229:8  
 253:13 280:10 316:17  
 327:8  
**examine** 276:15 278:11  
 345:20  
**examined** 10:11 143:4  
 229:1 322:2 345:20  
**examining** 5:8  
**example** 73:16 77:9  
 136:4 138:15 145:13  
 149:10 150:2 155:10  
 157:10 190:16 280:13  
 280:16 283:7 285:4  
 291:17 293:8 294:2  
**examples** 284:21  
**Excel** 11:5 12:3,16 52:9  
 58:8 133:6,12 135:14  
 138:7 140:1,11 152:7  
 154:1,15 156:9 161:3  
 164:19,20 166:12  
 184:5,20 188:11,18  
 190:9 191:17 192:17  
 193:1 196:3 203:6  
 207:11 209:17 221:20  
 225:19 226:5 229:11  
 245:11 246:19 247:1  
 268:14 269:15 280:14  
 280:22 281:5,10  
 282:22 285:9 287:19  
 288:5,7,9,19 289:1  
 290:2 291:16 292:4  
 293:4,9,22 297:14  
 298:10 303:6,8,15,18  
 322:6 325:3,6 334:17  
 336:21 337:6  
**Excellent** 9:14  
**exception** 149:13  
**excerpt** 224:21 225:19  
 246:3,6,21 247:12  
 277:10,11  
**excerpted** 224:8,10  
 230:12  
**excerpts** 229:5 230:22  
 245:11  
**excess** 125:3  
**exchanges** 280:7  
**exclude** 170:4  
**exclusively** 96:9 215:16  
 293:3  
**excuse** 24:20 93:8  
 120:21 132:16 134:2  
 137:21 147:17 148:5  
 148:15 150:21 169:16  
 188:4 191:4 219:4  
 250:21 260:3 280:12  
 342:12  
**excused** 129:1 346:21  
**execute** 75:5 179:7  
 197:16 255:12 318:10  
**executed** 153:21 173:6  
 298:3 300:4 317:2,18  
 319:14  
**executing** 220:6 254:21  
**executive** 195:12  
 197:14  
**exemplars** 257:21  
**exercise** 337:4  
**exhibit** 3:10 4:16 5:15  
 8:4 10:16 19:7,13,17  
 26:14 27:4 30:21 34:3  
 35:10,13 43:9,17,17  
 43:20 44:9,17 45:15  
 45:18,19 46:15,15,17  
 47:12,19 54:6,19  
 55:13,19 73:7 74:10  
 78:12 79:10 80:4

- 82:15 83:17 84:1 90:5  
90:8 94:14 102:20,20  
103:19 104:13 105:4  
106:10,21,21 107:12  
107:16,19,19 108:4,7  
109:8 112:6,12,19  
115:12 116:17 121:2  
121:14 123:2 124:1,7  
132:16 135:3 140:15  
143:10 149:12 151:11  
151:13 154:7,10  
155:15 156:1 157:8  
160:10,13 161:18  
162:8,16 164:9,11,13  
164:14,15 165:7  
166:11,13,19 167:2,5  
167:13,18 168:18  
170:14,19 171:3  
172:6,13,17,19,22  
175:8,10,14,16,17,20  
176:1,2 179:21  
180:13,15 187:2,8,15  
187:18,21 188:3  
191:10 194:14,15,20  
195:1,5 196:17  
200:15,19 201:17,20  
203:12,16,22 204:4,6  
204:9 205:19 206:5,8  
206:11,16 208:2,11  
208:15,17,20 209:22  
210:6,9,12,16,17  
211:6 213:3,6,10,22  
214:1,8,20 215:1  
216:3,6,10,13,15  
218:3,6,10,12,16  
220:15,18,22 228:11  
231:20 232:1,5,8  
237:11,14 238:7,15  
238:18 239:12,16,20  
240:1 241:21 242:2,6  
242:9 244:5 251:8,13  
251:16 252:19 256:8  
256:9,13 259:6,15,18  
259:22 260:4,11  
261:9 269:9 271:1,7  
279:11,13,21 280:13  
280:15 281:16 282:5  
282:7,19 284:11  
289:10 298:4,15,19  
298:21 300:2 302:9  
302:10 304:3,5,8  
305:14 310:1 311:20  
316:20,22 319:4,12  
344:13,19 345:1  
**exhibits** 26:22 126:6  
130:4 141:18 150:18  
169:17 228:20 230:8  
277:2 280:13 281:13  
281:16 284:18,22  
291:16 292:3 293:2  
297:16 298:13 302:5  
302:7 305:22 309:8  
334:19  
**exist** 264:8 291:11  
307:18 309:13 311:7  
311:8 312:17  
**existed** 307:8  
**existence** 56:5  
**exists** 8:9 149:18  
339:13  
**expect** 331:14  
**expensive** 330:4  
341:15  
**experience** 141:10  
340:3  
**expert** 99:21  
**expiration** 104:9  
**expire** 99:17 237:3  
**expired** 99:13 100:4  
101:15 105:9,14  
107:3 109:21  
**explain** 12:3 16:21 65:1  
96:4 135:10 145:3  
146:5 154:20 156:4  
174:15 192:16 235:5  
235:9,16 325:8 342:7  
**explained** 16:5 18:5  
177:16 214:6 250:19  
252:7 263:15 344:11  
**explaining** 143:12  
303:15 308:3,7  
333:12  
**explains** 17:4 156:6  
**explanation** 111:19  
135:9 170:8  
**expressing** 114:18  
223:20  
**expression** 84:9 86:2  
**expressly** 37:14 212:20  
**extension** 37:3 51:5  
**extensive** 252:8 323:16  
345:5  
**extent** 22:22 62:10 79:8  
80:17 186:8 190:18  
193:3,4 230:9 253:19  
263:9,10,11 273:6  
275:14 321:8 323:18  
**extra** 26:8 131:17  
214:10  
**extract** 320:22 321:12  
321:17  
**extractable** 322:19  
**extracted** 322:4,18  
**extracting** 331:22  
**extraction** 331:21 332:7  
332:8,8  
**extraordinarily** 87:1,13  
**eyeballing** 144:12
- F**
- F** 4:16 103:7,19 104:15  
104:22 105:4,6,12  
121:3  
**face** 167:14 237:2  
302:10  
**fact** 14:12 17:8 21:6  
23:15 25:6 38:2 83:4  
83:13 84:10 86:2  
89:20 91:10 92:7  
93:16 94:7 96:2,13  
105:17 143:17 147:3  
158:16 162:4 176:4  
181:20 184:3 185:4  
185:11 193:7 212:19  
221:5 237:18 244:18  
245:11 259:2 264:10  
265:11 268:4 269:20  
273:9 274:22 278:15  
293:6 307:17 309:13  
323:4 342:13,20,21  
**factor** 53:6,10  
**factors** 52:22  
**facts** 111:6  
**factual** 86:12 87:6  
**failed** 294:11  
**failure** 75:4  
**fair** 3:17 25:4,22 27:5  
31:18 50:10 195:2,3  
195:21 197:3,7,12,16  
200:22 222:21 235:14  
280:18 281:19 293:6  
295:13 338:5 340:15  
**Fair's** 196:9 199:21  
**fairly** 11:21 319:20  
**faith** 335:13  
**fall** 6:17 102:16 333:2,2  
333:2 342:10  
**falling** 224:13  
**falsely** 296:14  
**falsity** 80:16  
**fame** 217:4  
**familiar** 12:16 13:8,17  
14:10 15:21 88:4  
109:2 116:4 117:1  
152:21 154:8 158:3,5  
158:6,22 160:11,19  
167:15 170:22 172:20  
195:2,17 204:7 209:2  
210:9 214:21 216:22  
218:14 232:12,14  
238:21 240:4,9,17  
241:13 242:11,12,13  
251:20 324:3  
**familiarity** 12:5 168:8  
168:13  
**familiarize** 27:10  
**Family** 205:4  
**far** 14:3 66:10 67:1 85:1  
178:16 252:7  
**fault** 272:4  
**Feder** 1:21 9:19,21 10:1  
24:20,22 114:2,10,21  
115:11,21 124:21  
282:8,11  
**Federal** 268:9  
**feed** 3:13 4:9 26:17  
34:7 36:1,20 37:20  
39:5 40:8 41:8 46:2  
47:7 92:14,20 94:16  
94:17 95:12,19 96:4  
96:16 122:18 124:12  
345:14  
**feedback** 70:9  
**feel** 62:14 299:18  
**feeling** 84:17 85:4,14  
86:11  
**fees** 43:22 44:10 46:20  
93:20 106:12 107:18  
107:21 126:13  
**feet** 325:20  
**felt** 50:12 51:9,12 53:3  
77:3,14 85:15 86:8  
**Ferguson** 212:12  
**figure** 53:4 315:20  
338:22 339:6,9 340:3  
**figures** 87:1  
**file** 13:3 29:18 39:5 40:8  
91:5,6,10,12 97:6  
99:4 101:13 104:8  
113:18,19 114:17  
115:1,7 178:8 191:22  
226:4 228:12,18  
334:17  
**filed** 22:11 25:2,6 29:13  
29:16 30:1,16 39:17  
40:1 41:7 44:2 47:1  
91:14 92:7,10,15,21  
93:5 96:22 97:17,20  
98:3,16 99:9,11  
100:16 101:5,5  
106:16 117:2 124:3  
124:14 173:10,16  
176:4 179:9 180:2,2  
185:8 191:6 232:21

- 247:6 285:10,11  
318:11  
**files** 97:2,8 99:6 115:13  
115:16 132:12 231:1  
322:14  
**filing** 23:7 25:3,9 26:2  
37:6 98:12 101:18  
109:22 110:3 114:3  
117:16,17  
**filings** 20:18 26:9 98:11  
99:2  
**fill** 67:21 256:5  
**filled** 58:11 127:1  
**filling** 44:22  
**Film** 184:15 202:11  
**Films** 155:10 156:12,21  
217:16 218:22 268:6  
**final** 233:2 324:18  
**finally** 15:10,13,19 16:6  
70:5  
**financial** 181:2  
**find** 14:15 15:3,4,10  
26:9 73:2 83:13 93:22  
97:14 226:20 272:4  
309:5 330:16 341:10  
**finders** 274:21  
**findings** 88:9 273:9  
**fine** 27:15 32:9 52:19  
56:21 67:20 88:5  
274:18 281:8  
**finish** 39:2 88:5,7  
142:12,16 198:20  
199:1 230:19 297:21  
310:17 339:15  
**Fintage** 4:4,5,6 150:14  
150:19 159:20,22  
160:2,5,6 161:8,12  
174:22 177:11,13,18  
258:7,9,15 259:9  
260:7 261:19 262:1,9  
262:11 263:1,19  
264:4,6 266:5,8,9,13  
267:4 268:2,18 269:1  
269:2,11,18 270:6  
305:1 317:3,4,17  
**fired** 66:9  
**firm** 50:15 122:7 314:16  
322:18  
**first** 3:14 10:19 14:14  
37:19 55:19 56:1,3  
61:20 63:14 76:14  
82:7,9 86:20,21 94:16  
98:3 108:15 112:18  
114:7 118:18 121:17  
122:12 123:7 128:15  
133:17,19 134:4  
135:5,8,10,11 136:4,7  
136:9,13 137:3,7,14  
137:15,16 138:3  
139:17 145:14,14,16  
145:20 146:7,15,18  
146:20 147:1,13,16  
147:17,18,22 148:8  
148:15,18 149:9  
154:22 155:5,9,10  
156:7,11,19 175:10  
182:13 210:17 211:8  
211:13 233:13 237:13  
238:8,10,11 247:10  
250:12,13 276:4  
284:7 290:11 294:5  
299:6,8 300:3 345:11  
345:11,20  
**firsthand** 188:22  
197:20  
**fit** 6:5 274:11  
**five** 7:10 86:20 183:8  
245:18 250:4,7,9,10  
250:14  
**five-day** 74:19  
**flatly** 274:13  
**flip** 27:9 34:16 35:9  
55:7 86:19  
**Floor** 2:21 207:8  
**flown** 163:12  
**focus** 52:15 146:12  
**focusing** 144:16 149:9  
215:8 258:2  
**follow** 112:20  
**follow-up** 126:2  
**followed** 253:22 306:6  
**following** 86:21 114:22  
115:1 164:12,20  
166:12 237:16 246:20  
254:16 256:4 259:3  
261:16 285:18  
**follows** 10:12 143:5  
306:1  
**followups** 66:22  
**fore** 48:7  
**foreclose** 176:6  
**foregoing** 37:9 78:20  
251:1  
**foreign** 182:7 296:14  
**forever** 331:19  
**forfeiting** 75:13  
**forfeiture** 75:7  
**forget** 315:4  
**forgetful** 166:4  
**forgot** 118:17  
**form** 29:3 45:17 63:3  
75:5 115:17 199:8  
229:2 253:17,21  
254:1,11 255:3,8  
277:16 289:6 301:11  
310:19 318:9 322:6  
322:10,11 324:6,6  
325:18 337:5  
**formally** 36:21  
**format** 179:2 224:11  
328:13  
**formatted** 224:13  
**forms** 48:9,10 49:8  
126:17  
**forth** 63:8,10 100:17  
101:6,14 161:16  
189:17  
**forward** 34:17 35:10  
39:9  
**found** 5:22 15:6,11 27:6  
33:16 87:21 89:11  
188:20 256:21,22  
268:4 322:3 324:1  
**foundation** 108:3  
199:19,20 200:13  
245:3 246:8 313:10  
315:11,16 326:8  
**four** 35:9 86:20 152:2  
169:12 181:21,22  
189:16 190:17 248:21  
**Fourteen** 170:15,16  
**fourth** 213:12 290:15  
306:4  
**frame** 275:7  
**frankly** 264:9  
**free** 14:6 299:18 342:6  
342:7  
**Freewheelin** 218:22  
**Friday** 166:3  
**front** 8:18 43:16 46:15  
108:8 223:3,12  
247:20 310:17  
**frustrating** 332:3 340:3  
**frustration** 333:1  
**FTC** 36:21 37:1,7,12,14  
**full** 37:13 61:7 111:6,12  
296:20  
**fully** 77:10  
**functioned** 162:1  
**fundamental** 272:11  
**fundamentally** 273:22  
**Funds** 1:6,11  
**Funimation** 204:19  
205:12,17  
**further** 18:16 19:1  
41:16 54:7 60:3 90:10  
118:14 125:10 127:9  
127:18,20 143:4  
169:19 174:4 245:3  
253:2 270:10 344:16  
**future** 37:8 39:6  
  
**G**  
**gadget** 344:5  
**Gal** 270:9  
**Galaz** 3:6 4:12 21:10  
116:8,9 118:11  
125:18 127:15 128:11  
129:3,5 130:18 131:5  
131:11,19 132:11  
134:11 135:5 143:2,8  
155:12 156:4 163:19  
183:1 184:2 186:19  
193:22 197:2 201:13  
205:21 211:11 221:2  
222:5,17 223:19  
226:21 227:1 232:6  
235:11,17 238:17,19  
240:2 242:13 244:3  
251:18 253:15 256:3  
256:15,22 260:6  
265:1 270:9 272:14  
274:6 277:8 279:12  
280:3 292:1 302:11  
326:4,11 345:9  
**Galaz's** 44:21 87:21  
182:14,15 271:4,9  
272:22 273:7 326:9  
345:19  
**gazillion** 222:20,22  
**gears** 276:20  
**gee** 312:11  
**general** 11:15 34:10  
177:21 182:18  
**generalize** 153:8  
**generally** 230:7 266:3  
**generate** 306:16 321:7  
**generated** 247:12 307:5  
307:14 329:7  
**getting** 13:1 15:20  
51:22 88:21 110:13  
174:7 175:3 264:16  
275:6 279:3  
**giant** 312:5,6  
**Gitters** 233:12 234:7,9  
234:17,18 236:5,17  
236:19 237:3 239:9  
**give** 6:7 13:21 64:14  
83:11 130:19 150:2  
166:2 199:10 223:19  
226:2 227:4 249:13  
251:6 278:4 283:7  
294:5 306:21 339:22  
343:16

given 18:3 61:7 63:21  
 100:20 131:17,22  
 135:9 176:8 179:8  
 181:19 190:22 222:5  
 246:22 249:13 252:13  
 269:2 309:6 331:7,11  
 331:11 341:21  
 glad 337:1  
 glancing 304:14  
 glasses 118:17  
 Global 240:8,9,12,12,18  
 241:1,12  
 go 5:17 12:11 14:5  
 20:16,17 29:6 30:15  
 32:4 42:17 46:1,14  
 55:18 58:2 60:3 62:3  
 62:5 64:7,10 66:20  
 69:22 73:6 76:8 80:18  
 84:1 107:5 108:5  
 115:6 131:15 141:14  
 149:4 157:13,14  
 166:18 194:17 219:5  
 220:11 225:9 231:18  
 257:17 279:11 299:21  
 305:3 316:16 317:9  
 340:8 346:10  
 goal 142:16  
 goes 50:4 56:7 110:20  
 111:20 115:19 157:7  
 163:5 164:11 169:2  
 169:14 229:6 278:3  
 306:1 317:14  
 going 5:14 13:21 15:6  
 15:15 39:1,9 42:17  
 43:5 59:4 68:22 74:4  
 82:11 83:12 85:1  
 88:20 100:22 129:20  
 129:21 130:5 133:22  
 134:7 140:20 142:12  
 150:3 151:16 194:15  
 194:16 201:13 208:6  
 222:7 225:4 227:18  
 227:19 228:8 230:3  
 233:1 246:2 247:18  
 248:11 254:18,21  
 258:1 262:2 263:9,12  
 263:14 264:18,21  
 317:6,8,10 327:11  
 340:17 343:10 347:2  
 good 8:19 9:2 10:3  
 19:22 46:12,12 50:14  
 60:1 66:10 67:1 78:14  
 91:1 280:2,4 338:3  
 gotten 11:7 77:13 95:22  
 187:10 235:7  
 graciously 130:3

grammar 318:17  
 grant 212:21  
 granted 56:8 176:19  
 186:6 301:13  
 grapes 84:17,18  
 great 12:9  
 Greg 20:1 280:3  
 GREGORY 2:19  
 ground 305:19,20  
 320:5  
 grounds 80:7 103:21  
 109:10 175:19 311:14  
 group 2:2,3 4:1 121:22  
 239:4 242:19,20  
 243:4,5 244:18  
 245:17,22 257:2  
 Group's 37:1  
 guess 33:12 49:18  
 65:11 98:8 100:2  
 115:14 224:13 225:3  
 273:18 317:8 343:12  
 guessing 81:20 317:7  
 guys 27:18

# H

hair 331:18 341:16  
 half 141:13,14  
 halfway 149:3,5  
 hamstrung 230:20  
 hand 5:14 12:18 220:13  
 287:21 315:6  
 handed 79:10 125:14  
 125:16 308:15  
 handled 284:2  
 hands 330:16 343:4  
 handwriting 45:1 47:4  
 47:5  
 handwritten 44:6,21  
 45:1 191:19,20  
 192:19  
 Hang 219:4  
 happen 261:15  
 happened 16:8 91:17  
 91:19 101:4 308:18  
 312:11  
 happening 142:19  
 happens 124:20  
 hard 101:16 288:2,17  
 291:6,7 293:7 307:11  
 307:13 308:20 309:2  
 312:13 313:14,15  
 314:11,12,17 318:5  
 320:12,17,18,20  
 321:13 322:2,4,19  
 330:7,18 332:9,13  
 334:8,13 335:2,3,5,17

335:20 336:20 337:16  
 340:10 343:17 344:4  
 HARRINGTON 2:9  
 harshly 262:7 264:15  
 Hawthorne 241:5,13  
 head 202:17 209:16  
 heading 156:8,13  
 174:22 284:15  
 heads 345:16  
 Healthy 243:8,15  
 245:15,16,21 249:1,1  
 hear 59:4 271:18 297:7  
 315:20 327:6  
 heard 31:16 64:18 90:5  
 94:17 116:18 168:14  
 271:11 313:18  
 hearing 1:19 23:9 73:21  
 74:20,22 76:15,21  
 80:10 111:12 129:15  
 132:5 168:22 229:1  
 233:2 347:10  
 hearings 95:6 323:20  
 hearsay 16:13 174:6  
 196:11 199:19 201:6  
 201:7 207:20 243:17  
 Heart 171:17  
 Heather 180:20,20  
 heavens 315:21 316:7  
 heck 255:20  
 held 20:9 261:22  
 help 18:22 54:6 192:2  
 helpful 272:5 273:15,16  
 Hinn 9:7,10,15  
 hired 241:14  
 history 87:21 98:18  
 323:19  
 hold 12:18 70:5,14,17  
 129:12 317:6  
 holding 95:6,14  
 holes 341:2  
 HOLMES 2:19  
 home 333:1  
 honest 72:15 278:18  
 Honestly 39:11  
 Honor 5:10 6:11 7:16  
 10:6 18:17 19:2,7,15  
 25:5,20 26:15 28:5,11  
 29:17 30:2,9,17,20  
 31:7 32:13 33:2,3  
 34:1 37:22 38:12 41:1  
 41:6,11,18 42:1,2,7  
 47:13 54:5 56:18,22  
 62:8,19 63:2 64:1  
 66:2 67:8 68:12 69:9  
 71:1 74:9 77:21 78:19  
 79:5 80:5,6 81:4

82:10,14 83:2,7 84:8  
 85:22 87:8 88:12 89:5  
 89:14 90:1,11,14,20  
 94:20 96:18 98:1  
 99:14 101:8 103:18  
 103:20 104:6,15,20  
 108:2 109:7,9,15  
 110:4 111:3,18  
 117:11 118:4 121:4,5  
 123:1,3,8,9,18 125:9  
 127:10,12 129:2,6  
 130:19 131:4,14  
 132:7,11 134:2,20  
 141:2,17 142:11  
 143:8 151:16 152:1  
 155:14 162:6,18  
 163:5,16 164:8 165:8  
 165:12 166:10 168:17  
 168:19 169:13 170:20  
 172:5,7,12,18 174:11  
 175:5,7,18 176:7,17  
 183:14 185:1,6  
 186:15 187:7,14,17  
 193:15 194:13,21  
 196:13,16,19 198:7  
 199:18 200:1,6  
 201:15 203:15,17  
 205:18 206:9 208:1,4  
 208:16 209:21 210:7  
 211:1 213:2,16 214:4  
 214:17 216:2,11  
 218:2,11 220:14  
 221:2 222:4,13 223:1  
 226:18 227:1,7 228:1  
 228:16 229:13,16  
 230:17 231:6,12  
 232:3 237:10,13  
 238:16 239:11,15,21  
 241:20 242:7 244:4  
 245:2 246:1 247:3,9  
 248:9 249:19 251:14  
 252:18,20 253:5,10  
 255:17 256:8,14  
 259:14 260:1,10,21  
 265:9 266:19 270:8,9  
 270:12 272:9 276:4  
 277:13 278:7,13  
 279:8,10,22 301:6,8  
 302:13 304:10 305:15  
 305:16 307:2,22  
 309:5,11,21 310:14  
 313:16 320:4 321:14  
 323:1,9 324:15  
 325:21 326:1,15  
 333:9 335:8 340:2  
 346:4,9 347:4,7

<b>HONORABLE</b> 1:20,21 1:21	285:15 287:13,15 296:18 297:10,18 300:19 303:9,12 320:3	111:9 220:9 330:18 337:16	312:22 313:4,8 328:22 335:6,12,20 336:20 337:6,17,18 338:9,10,14,16,19 339:17,18 342:4,8
<b>Honors</b> 44:13 274:4	<b>identifies</b> 139:10 148:18 154:22 156:10 190:10 239:7 248:22 297:17 298:8	<b>incomplete</b> 67:18 68:2 169:8 175:17 244:22 253:4	<b>informed</b> 72:7 158:20 <b>initial</b> 119:14 186:18 197:14 199:10
<b>hope</b> 25:5 219:16	<b>identify</b> 12:12 43:19 46:17 139:2 144:19 149:18,19 190:5 224:8 226:9 227:2 285:1 299:4 333:13	<b>incompleteness</b> 176:3 <b>incorporate</b> 323:19 <b>incorporated</b> 322:20 <b>incorrect</b> 188:9 <b>incredulous</b> 342:14 <b>incumbent</b> 12:17	<b>initially</b> 199:14 255:14 327:22 <b>input</b> 45:5 <b>inquire</b> 41:16
<b>hopefully</b> 142:13,15 272:16	<b>identifying</b> 11:11 53:10 155:12 202:5 268:16 268:17,18	<b>Independence</b> 1:17 <b>independent</b> 2:3 36:22 121:22 140:12	<b>Inside</b> 219:15,15,20 <b>insisted</b> 307:17
<b>hoping</b> 131:20 346:10	<b>identity</b> 265:18 266:21 II 1:5,7,10,12	<b>indicate</b> 133:13 136:1,5 136:8 140:3 188:13 189:18 209:13 215:18 217:12 219:11 305:10	<b>instance</b> 61:4 136:7 147:9 148:6 155:1 156:11,19 173:22 221:12 284:6 285:4 290:6
<b>horrible</b> 16:11	<b>Ike</b> 17:18	<b>indicated</b> 56:9 100:21 135:13,17,20 168:11 184:7 203:7 207:10 207:12 235:17 240:22 241:14 245:14 246:18 268:15 280:22 283:17 305:9 307:9 311:8	<b>instances</b> 77:3,10,14 91:20 136:3 138:19 145:22 180:7 221:3 302:1
<b>horses</b> 345:15	<b>illuminate</b> 272:17	<b>indicates</b> 156:13 189:11 200:3 202:11 211:7 212:17 239:9	<b>Institute</b> 202:12
<b>hosts</b> 212:3,9	<b>illuminates</b> 275:20	<b>indicating</b> 152:16 196:3 204:21 212:14 224:4 225:2	<b>instruct</b> 346:5
<b>hour</b> 7:6 131:4,7,13,20 131:20 141:13,14 273:15	<b>illustration</b> 169:15	<b>indication</b> 207:7 234:16 263:18	<b>instructed</b> 320:22
<b>hours</b> 7:8,9,11 132:1 141:11 345:13	<b>illustrative</b> 272:20,22	<b>individual</b> 114:8,9 164:1 166:1,7 178:11 206:12	<b>instruction</b> 330:12,13
<b>house</b> 4:6 17:18 159:22 160:2,5 161:8,12 262:16 269:11,18	<b>imagine</b> 11:21 12:4	<b>individually</b> 332:13	<b>Intelisando</b> 3:19
<b>housekeeping</b> 7:19 344:15 345:2,4	<b>IMDB</b> 15:5	<b>individuals</b> 189:3 198:18	<b>Intelisano</b> 206:12
<b>Hoyt</b> 4:2 240:8,9 241:7	<b>immediate</b> 62:11	<b>indulgence</b> 228:3	<b>Intelsiano</b> 206:14,18
<b>hundred</b> 11:16	<b>immediately</b> 62:15	<b>inexplicable</b> 76:16	<b>intend</b> 104:10 130:7 272:15 274:8
<b>hundreds</b> 82:6	<b>impeach</b> 32:2 80:18 83:5 336:17 337:12	<b>informal</b> 241:16	<b>intended</b> 37:9,12 50:3 50:19 57:16,20 58:2 59:8 69:5 119:4
<b>hunt</b> 14:22	<b>impeached</b> 230:13	<b>information</b> 14:22 15:8 20:16,19 49:19 53:17 61:6,9 70:8 71:17 73:3 109:17 113:22 143:13 161:7,13 177:4 178:8,16,18 185:4 190:2,9,13,14 190:15,21 192:22 204:21 212:14 215:17 217:12 226:6 237:5 240:22 243:18 244:1 244:11 246:18 249:6 267:15 269:19 270:17 281:2,12 287:15	<b>intensity</b> 131:6
<b>hunting</b> 158:9	<b>impeaches</b> 31:14		<b>intent</b> 147:4 165:1
<b>hurricane</b> 17:18	<b>impeaching</b> 31:9,11		<b>intention</b> 65:22 66:4 69:2 91:8,9 119:6 131:16 273:13
<b>hurt</b> 51:9	<b>impeachment</b> 31:6,19 82:19 86:4 104:7 112:7,18 123:11,14 123:15 338:3		<b>intentionally</b> 119:7,11 119:12,15,17
<b>Husband</b> 17:17	<b>imply</b> 110:16		<b>interact</b> 22:2
<b>hypothetical</b> 67:9,19 68:3	<b>important</b> 51:1 52:12 67:12		<b>interchangeably</b> 68:21
	<b>importantly</b> 279:5		<b>interest</b> 7:5 20:21 21:3 22:11 111:8 116:19 117:4 258:12,13 342:17,18
<b>I</b>	<b>improper</b> 237:17		<b>interested</b> 334:9
<b>i.e.</b> 162:2 283:19	<b>in-house</b> 341:19 342:1		<b>interesting</b> 205:15 309:6 341:12
<b>Iberica</b> 268:10	<b>inaccuracies</b> 272:5		<b>interests</b> 258:14 263:13
<b>ID</b> 3:10	<b>inaccurate</b> 292:12		<b>Internacional</b> 268:8,9
<b>idea</b> 23:4 50:14 91:22 102:11 158:21 177:18 178:22 303:3,17	<b>inadvertently</b> 58:6		<b>internal</b> 113:5
<b>identical</b> 164:15 167:5	<b>incarceration</b> 261:17 262:22		<b>internally</b> 114:12,16 125:1
<b>identification</b> 19:18 34:4 43:11 44:18 47:20 78:13 83:18 90:9 121:15 148:12 154:11 160:14 167:19 171:4 173:1 180:16 195:6 201:21 204:10 206:17 208:21 210:13 215:2 216:16 218:17 257:11 297:20	<b>include</b> 60:19 62:5 65:8 65:12 69:22 175:20 185:19		
<b>identified</b> 28:15 42:10 47:8 52:2,16 57:19 134:13 138:22 145:9 154:5 156:7 157:21 161:17 163:2 170:10 187:21 205:14 267:3 268:3 283:22 284:4	<b>included</b> 65:13 70:20 165:3 175:16 177:4 298:13 324:7		
	<b>includes</b> 35:18 94:15 159:10		
	<b>including</b> 37:1 110:11		

**International** 182:4,6  
 184:15 243:10 245:14  
**Internet** 203:13 205:6  
**interpret** 251:6 301:11  
**interpretation** 145:10  
 325:11  
**interrupt** 139:14 325:22  
 341:12  
**introduced** 202:20  
 293:3  
**intuitive** 76:16  
**invent** 343:18  
**invite** 299:17  
**involved** 23:6 26:17  
 65:20 205:9 226:12  
**involvement** 21:3  
 241:19  
**IPG** 3:11 7:9 10:10,18  
 19:17 20:3,22 21:4,9  
 21:20 22:12,21 24:2,6  
 24:15 25:6,10 26:10  
 33:17 34:8,12 36:12  
 37:6,12 38:19 39:4  
 40:12 41:7 45:20 46:2  
 47:1,8 56:4,7 58:1,3  
 58:18,20 59:2,8,13  
 62:6 64:8 65:7,9,17  
 65:19,20,21 66:9 67:7  
 68:9,11 69:6,22 70:20  
 70:22 71:9 72:4 74:18  
 75:21 76:1 77:5 80:9  
 84:15 85:21 86:15  
 89:2,11 91:6,12,15  
 92:11,15 94:15 96:2  
 96:16 99:13 104:3  
 105:14,17 106:3,21  
 107:3,12,20 108:22  
 109:16 110:10,12,14  
 110:17 111:9,18  
 113:1,3,4,7 116:13,20  
 117:4 118:11 119:3,7  
 119:10,15,20 120:11  
 120:17 121:6,14  
 123:22 124:3,13,20  
 125:1,1 127:21 128:7  
 129:2 132:16 135:2  
 139:18 142:7 146:6  
 147:2 150:21 154:10  
 155:21 156:1 158:12  
 160:13 162:15 164:16  
 167:18 169:16,19  
 170:18 171:3,11  
 172:16,22 173:7,10  
 175:17 178:12 180:15  
 181:4 187:21 188:22  
 194:19 195:5,13

199:15,16 200:18  
 201:20 204:3,9 206:7  
 206:16 207:1,4,12  
 208:14,20 210:5,12  
 211:20 213:9 215:1  
 215:13 216:9,15  
 217:7 218:9,16 219:3  
 219:8 220:21 233:5,7  
 233:15,18,21,22  
 234:5,11 235:18  
 236:16 237:13 238:15  
 239:20 240:13 242:6  
 242:20 245:18 249:8  
 251:13 252:1,4  
 255:22 256:13,16  
 258:7,8,15 259:22  
 261:9 263:2 266:5,8  
 266:12 267:3 270:16  
 279:20 286:7 296:13  
 309:6 310:3 319:3  
 325:18 331:12 341:6  
**IPG's** 4:10,10 23:7,16  
 24:11 26:4,10 33:16  
 37:19 44:2,10 48:21  
 59:19 71:21 72:19  
 80:9 88:10 89:22 97:2  
 97:8,17 105:8 106:11  
 107:17 110:22,22  
 112:15 118:20 120:5  
 125:2 128:3,16 247:7  
 274:1 294:10 337:11  
**IPG-Fintage** 265:11  
**IPG-represented** 60:20  
 73:17 75:16 189:1  
 204:19 209:11 219:9  
**ire** 234:21 235:5,10  
**irrelevant** 33:6 80:14  
 104:5 183:13 247:13  
**irrespective** 84:5 85:7  
**issue** 33:20 95:18 120:4  
 150:10 222:9 252:9  
 255:21 291:13 295:16  
 295:22 314:11 315:6  
 323:4 332:2,16  
**issued** 85:19 287:7  
**issues** 72:8 246:17  
 274:9 343:2  
**item** 46:1 135:6 157:4  
 157:22 257:12  
**items** 205:3  
**IWV** 15:4 97:6,14,17,18  
 97:22 98:7,12 99:4,6  
 242:16,18,20,22  
 243:4,5 244:18  
 245:17,22

## J

**J** 2:9  
**Jackson** 197:15  
**Jacobs** 3:21 218:14,14  
 218:20 220:4  
**Jane** 3:8 185:7 189:13  
 290:22 306:2  
**January** 81:14,15  
**Jaw** 240:20 241:2,16  
**Jean** 81:17,18 82:3  
 108:11 111:7  
**Jennifer** 171:6,8  
**JESSE** 1:21  
**job** 11:22 12:1  
**John** 213:13 216:20  
**joining** 21:20  
**joint** 4:10 23:19 24:1,3  
 24:5,7,16 26:10 43:21  
 44:2,10 46:3,19,22  
 47:8 106:11 107:17  
 259:9 260:7 265:12  
 282:15  
**jointly** 20:18 258:16  
**joking** 166:9  
**Jonathan** 4:3 251:17  
**Jones** 37:2  
**Judge** 5:3,18 6:2,6 7:1  
 7:17,18 8:3,7,9,22 9:3  
 9:7,9,12,16,19,21  
 10:1 16:3,18 17:2,11  
 18:18,21 19:3,13  
 24:20,22 25:15 26:19  
 27:2 28:10,13 29:2,6  
 29:20 30:5,12,19  
 31:10,15,21 32:3,15  
 32:22 33:8,22 35:2  
 38:3 41:2,10,12,15  
 42:3,9,12,15,19 43:2  
 43:7,12 44:15,20 45:7  
 45:13 46:6,9 47:16  
 54:11,16 56:20 57:6  
 62:16,21 63:5 64:5  
 67:13,17,20 68:2,19  
 71:6 74:12 77:22  
 78:14,17 79:1 81:1,6  
 82:16,22 83:3,10  
 84:11 86:5 87:10  
 88:14 89:7,17 90:4,12  
 90:17 93:8,13,16,21  
 94:5,9,12 95:4 96:20  
 98:4 99:19 101:11  
 104:12,17,21 108:5  
 110:8 111:22 112:5  
 112:13 114:2,10,21  
 115:11,21 117:21  
 118:6 120:21 121:2,8

121:12 122:3,8  
 123:16,19 124:21  
 125:11,14,17,20  
 126:2,5,9,13,16,19,22  
 127:4,7,19,22 128:6  
 128:10,14,20 129:4  
 129:13 130:14 131:1  
 131:9,22 132:8  
 133:21 134:12,16,19  
 134:21 139:14,15,16  
 139:17 140:5,10,14  
 140:17,19 141:6  
 142:3,9,17,21 149:4  
 151:21 155:11,21  
 162:13 163:14 165:10  
 165:13,18 166:5,20  
 167:10 170:12,16  
 172:13 174:9 175:2  
 176:1,10,18 177:9  
 182:19 183:10,17,21  
 187:1,5,12,18 188:3  
 191:4 192:22 193:5  
 193:12,20 194:4,7,15  
 196:15,21 198:11  
 199:2 200:10,15  
 201:11 203:22 206:4  
 207:22 208:11 210:3  
 211:2 213:6,17 214:7  
 214:12,18 216:6  
 218:6 219:4 220:18  
 223:11,17 224:6,16  
 224:20 225:7,9,10,14  
 225:18 226:8,19  
 227:8,15,18 228:2,6  
 228:14,19 229:14,17  
 230:3,19 231:8,18  
 232:1 238:4,7 239:16  
 242:2 243:18,21  
 244:6 245:4 246:9  
 248:19 250:21 253:12  
 256:9 259:18 260:14  
 260:17,22 261:3,6  
 264:17 265:2,7  
 266:18,22 270:11,15  
 271:6,18,21 272:19  
 273:5 274:15 275:2,4  
 275:5,13,20 276:3,19  
 277:18 278:19 279:9  
 279:18 280:1 282:3,8  
 282:10,11,12 292:11  
 292:14,18 299:11,14  
 301:13 302:11 304:8  
 306:21 309:18 310:9  
 311:2,18 312:20  
 313:9,14,20 314:2,10  
 314:22 315:6,9,15,19

316:2,5,10,12,15  
 320:6,11,16 321:10  
 321:15,22 322:11,17  
 323:14 324:13,16  
 325:2,5,19 326:20  
 327:5 334:2,7,18  
 335:1,5,9,11,15,17,19  
 336:16 337:9 338:8  
 339:8,15 340:19  
 341:11 342:2,11  
 343:9,14,20,22 344:2  
 344:4,7,19 345:2  
 346:2,7,13,22 347:5,9  
**Judge's** 133:8 135:16  
 154:18 161:5 184:21  
 191:14 192:1 209:18  
 227:13 246:20 247:21  
**judges** 1:1,22 5:5 6:13  
 29:14 87:20 88:9  
 89:11,21 96:12  
 112:22 149:22 190:3  
 190:8 225:22 226:9  
 227:11 228:15 232:22  
 251:9 270:20 271:2  
 272:5,6 276:6 286:10  
 287:7 290:6 291:12  
 295:22 296:6 322:22  
 324:9 326:10 333:6  
 336:15  
**judgment** 51:18 170:3  
**judicial** 117:12 118:1  
**July** 25:15 35:14 37:3  
 37:20 39:10,18 40:1  
 41:7 44:3 55:15 93:3  
 93:5,5,14,17 94:2,2  
 106:16 121:18 123:4  
 124:3,8,14 133:8  
 135:16 154:18 161:5  
 184:21 190:7 227:13  
 246:20 286:10 287:7  
 297:15 324:9  
**jump** 320:6  
**June** 4:11 74:18 79:16  
 234:13 236:1 237:3  
 239:10 339:5  
**junk** 340:1

## K

**keep** 100:22 109:22  
 113:20 227:18 264:12  
 264:21 303:15  
**keeping** 225:15  
**kept** 309:10  
**Kessler** 308:8,13 312:9  
 314:9 318:5,8 320:9,9  
 328:14 329:3 335:22

336:2 338:21  
**Kilborn** 212:9  
**killing** 315:22  
**kind** 6:12 51:21 53:9  
 58:19 157:7 304:21  
**King** 319:15  
**knew** 6:16 21:20 107:2  
**know** 7:15 9:16 12:9,10  
 12:20 13:2,3,16,21  
 14:16,20 15:1,7,11,15  
 18:5 28:14 29:9 30:7  
 30:10,13 31:8,15  
 35:22 36:2 39:1,12  
 40:14,15,19,21 49:20  
 50:13,14 51:4,5,7,18  
 52:7,9,15,17 53:10,13  
 54:9 58:3,12,13,22  
 59:1,5,11,14,15,21  
 60:7,9 61:1,3,3 64:11  
 64:17 65:14,22 66:3  
 76:2,5,22 77:2,9  
 80:21 83:8 84:22 85:1  
 85:10,13,14 86:10,14  
 91:17 92:1,14,17,21  
 93:3 96:4,5,7,9,19  
 97:4,13 98:9,10,10,12  
 98:14,14,15,15,17,18  
 98:19,19,20,22 99:1  
 100:3,6,7,8,9,9,10,20  
 100:21,21 101:7  
 102:2,9,10,11,12,13  
 107:7,8,9,11,11,14  
 113:10,14,21 115:3,4  
 115:5,7,18 116:2,3  
 124:6 132:3 136:17  
 136:18,21 144:13  
 146:12 153:6 156:14  
 159:17 162:4,20  
 164:5 169:10 171:8  
 172:3 176:12 179:16  
 179:18 180:20 185:7  
 188:22 190:3 194:4,8  
 194:10 195:9 197:2  
 197:11 198:2,12,15  
 198:17,19 203:3  
 204:17 215:9 223:2  
 224:6 226:14 227:8  
 228:16 233:14 244:17  
 244:20 246:11 248:14  
 248:16,17,18 251:4  
 254:1,17,17,20  
 257:20 258:2 262:17  
 264:8 277:22 278:21  
 279:4,5 285:5,10  
 305:2 306:9,17  
 314:17 321:4 322:3,7

323:13,18,20 324:3  
 324:18 326:3 328:1,8  
 328:10,17,19,21,21  
 329:1,2 330:1 331:3,5  
 331:6 334:12,16,18  
 341:8 343:1,20,21  
 344:7,7 345:18 347:1  
**knowing** 340:6  
**knowingly** 92:12  
 100:19 101:9 102:17  
 104:8  
**knowledge** 22:12 26:12  
 116:21 118:20 127:15  
 127:17 140:12 144:13  
 148:1 150:19 153:3  
 159:4 162:1 164:5  
 179:14 197:20 199:21  
 200:9,12,14 211:16  
 223:16,20 320:13  
 321:19 324:11,12  
 331:9  
**known** 92:8 152:22  
 156:17 158:22 285:3  
**knows** 13:18 323:12  
**Knupp** 2:20  
**Kowalski** 4:17 103:5,10  
 103:14  
**Kyle** 49:18

## L

**lack** 253:7 315:10  
**landlord** 33:16,17  
**language** 100:9 172:9  
 252:22 254:5 258:20  
**laptop** 229:20 230:2  
**large** 141:18  
**largely** 271:15  
**larger** 144:4  
**Larri** 37:2  
**Larry** 13:10  
**late** 5:4 33:17 212:1,2,2  
 212:5,5,8,8 273:17  
 279:1 344:5  
**Laughter** 5:7 7:3 8:11  
 9:18 14:8 118:2,8  
 231:4 271:20 276:2  
 316:1 334:1 346:19  
**law** 122:7 273:9 296:11  
 322:18  
**Lawrence** 171:9,12  
**lawyer** 7:2 86:16 288:10  
**lawyers** 330:14 331:17  
 341:8  
**lay** 108:3 245:3 330:16  
**Le** 2:5  
**leading** 120:6 177:8

**learned** 314:14  
**learning** 104:9  
**leave** 59:14 116:17  
 128:21 343:10  
**Leaving** 245:15,16  
**lecture** 5:6  
**left** 15:11,12,13 67:10  
 264:22  
**left-handed** 125:15,18  
**legal** 38:1,13 42:3 67:21  
 99:15,17,21 117:8,14  
 183:11 237:14 300:19  
 306:22 307:4 311:2,4  
**legible** 5:19  
**legitimacy** 120:4  
**legitimate** 80:17  
**length** 141:8  
**lengthy** 131:17,18  
 319:20 331:16  
**let's** 20:19 42:22 45:9  
 46:14 60:5,13 66:9  
 73:6,6,12 76:8,9  
 78:17 86:18 120:21  
 133:17 189:5 219:14  
 226:16 227:19 283:9  
 285:9 289:10 293:21  
 296:10 298:15 317:8  
**letter** 3:12,13 10:17,22  
 11:1 19:8 91:22 92:5  
 93:2,4 121:17 122:2  
 122:12,14,15,20  
 123:4,8,9 124:13,17  
 228:10 290:11 341:6  
**Letterman** 211:7,14  
 212:2  
**letters** 23:2 52:8,11  
 69:18 91:21 261:18  
**letting** 132:2  
**Library** 1:16  
**licensees** 220:13  
**lie** 80:21,22  
**life** 16:8 80:22 202:6  
**lift** 60:21  
**light** 69:7  
**limited** 138:16,17  
 157:11 179:2 283:2  
**limits** 100:7  
**line** 28:14 47:10 82:7,9  
 84:2 85:18 106:20  
 107:19 108:15 112:18  
 121:6 139:18 187:3,5  
 187:12 231:10 254:13  
 290:15 331:14  
**lined** 193:22 194:7  
**lines** 81:10 224:9,20  
 315:4 328:1

link 192:4  
 linked 221:21  
 Lisa 98:13  
 list 3:14 4:6 11:5,6,8  
   13:3,5 16:10 45:20  
   46:3 52:1,3 57:9 58:5  
   59:7 61:16 67:6  
   109:16,17,18 113:21  
   116:3 132:22 137:21  
   137:21 138:6 139:1  
   154:19 169:12 185:9  
   186:14 191:11 192:10  
   267:22 269:10,12,18  
   277:8,10 285:15,16  
   307:5 311:5,15 318:6  
   318:14 319:11,21,21  
   324:21 325:1,16  
   328:2 329:12,20  
   339:1  
 listed 24:7 109:18  
   158:16 183:6,8,8  
   208:9 219:22 282:7  
   327:15,16  
 listing 288:1 306:4,5,6  
 lists 4:13 57:14,15  
   185:7 224:2 306:10  
   307:14 308:11 309:3  
   312:1,5,6 321:8  
   328:12 329:15 330:22  
   331:8,22  
 listserv 68:21 113:6  
 literally 146:13 148:6  
   148:13 189:17 236:7  
   257:9,12 258:2  
   267:13 295:9 330:15  
 little 18:19 23:12,13  
   48:2 51:17 58:7 77:15  
   84:21 85:1 94:22  
   115:15 134:3 149:1  
   162:7 166:3 189:5  
   227:21 261:18 279:1  
   280:6 283:5 296:21  
   326:2 332:19  
 Litton 4:1 233:15,17,22  
   233:22 234:1,5,8,11  
   234:11,19 235:19,19  
   236:11,12,12,20,22  
   237:1 239:4,8  
 live 345:12  
 lives 14:2 332:5  
 living 3:20 215:6,8,10  
   215:12 216:1 243:9  
   243:15 245:21 249:1  
   249:1 262:16 333:2  
   334:9 341:17  
 LLC 240:18 241:12

LLP 2:4,14,20  
 LM-403 1:15  
 long 14:16 15:3 16:10  
   18:8 29:1 36:2 77:13  
   134:14 140:22 155:16  
   228:4 231:21 233:7  
   262:8 279:14 327:5  
   336:6 338:16  
 long-time 181:6  
 longer 53:15 141:13,14  
   264:10 346:10  
 longest 96:10  
 look 6:8 27:3 54:19,22  
   72:22 73:6,12 74:16  
   76:9 83:22 102:19  
   106:10,20 107:5,16  
   107:19 114:7 132:15  
   133:17 150:5 151:10  
   152:2 154:6 155:9  
   156:22 157:22 160:9  
   167:13 170:21 172:19  
   180:13 183:4 184:17  
   191:9 194:22 201:16  
   204:5 206:10 208:17  
   210:8 214:19 216:12  
   218:12 232:4 238:17  
   239:22 242:8 251:5  
   251:15 259:5 260:4  
   269:8 289:10 291:18  
   292:5 301:21 319:4  
   319:12 340:7,17  
   341:7  
 looked 73:9 124:7  
   174:4  
 looking 10:16 29:4  
   107:15 115:14 135:5  
   143:9 161:6 162:20  
   165:4 192:18 235:1  
   243:3 257:5 260:18  
   267:14 298:10 306:3  
   316:19 336:18,20,21  
 looks 27:11 29:15  
   248:17  
 Los 2:5  
 losing 96:1  
 loss 289:18  
 lost 17:18 186:16  
 lot 11:3 12:21 15:5 17:7  
   20:15 52:4,16 55:11  
   70:5 84:17 85:15 92:2  
   99:8 151:4 191:18  
   220:9 222:5,5 303:14  
 lots 16:11 20:16,17  
   267:13  
 Louis 158:9  
 lousy 226:15,15

low 23:13  
 lower 156:22  
 LUCY 2:19  
 lunch 6:17,19 129:22  
   142:12 143:9 273:4  
   346:6,11  
 Lutzker 2:13,14,14  
 LYNCH 2:10

---

**M**

---

M 1:20  
 ma'am 16:22 165:2  
 machines 328:20  
 MacLEAN 2:9 3:4,7  
   6:11 7:4 15:17,20  
   16:13 19:11 32:13,16  
   32:20 41:11,12,13,18  
   44:12 47:14 81:3,4,8  
   82:14 90:13,14,19,22  
   91:2 94:13 95:2,8,9  
   96:21 99:3 100:12  
   101:12 103:18 104:6  
   104:14 105:5 108:2,6  
   109:7,11,15 110:7,9  
   111:18 116:5 117:11  
   117:21 118:3,9,14  
   120:6 123:7 127:11  
   127:14,18 129:6,18  
   132:2,6 134:17,18  
   140:21 141:2,15,17  
   142:15 155:20 162:12  
   163:9 164:8 165:11  
   166:10,22 167:4,8  
   172:11 174:6 175:18  
   176:17 177:8 182:12  
   182:20 186:15,21  
   187:7 196:11,19  
   197:1 198:7,14 199:5  
   199:18 200:6,13  
   201:6 203:21 207:20  
   208:3 210:2 213:5  
   214:4 216:5 218:5  
   220:17 222:4 223:1  
   231:10,11,12,16  
   235:6,12 239:14  
   242:1 243:17 246:1  
   247:9 249:19 250:12  
   253:10,14 255:22  
   256:7 259:17 260:13  
   275:1 276:3,4,17  
   277:4,7 278:7 279:17  
   325:19,21 326:21  
   346:1,4,14,16  
 MacLean's 111:5  
   112:14  
 Madison 1:16

magic 50:2  
 main 48:3 52:15 59:11  
   207:8  
 Mainframe 209:10  
 majority 175:15  
 making 102:10,13  
   107:10,13 110:21  
   111:21 137:22 144:8  
   152:17 161:8,12,14  
   177:6,11,12 182:1  
   184:4 186:3 187:2  
   188:21 189:13,19  
   190:6 209:14 212:15  
   215:19,22 217:13  
   219:12 234:16 239:8  
   243:5 245:15,20  
   267:19 268:16 271:14  
   278:17 282:6 295:7  
   322:17 332:14 337:3  
   341:4  
 man 13:14  
 managing 317:3  
 mandate 37:2,5,11 51:4  
   51:6  
 manifested 147:3  
 manipulate 224:21  
 manipulation 323:22  
 manner 224:22 286:16  
   287:16  
 March 20:22 74:5,6  
   103:16 105:21 106:2  
   106:18  
 margins 45:2  
 Marian 18:3,6,12 98:12  
 mark 121:5 206:12,21  
   207:2 272:1  
 marked 19:16 34:2  
   42:10 43:9 44:16  
   47:18 78:4,7,12 83:16  
   90:7 121:14 132:16  
   151:11 154:7,10  
   160:10,13 167:13,18  
   170:21 171:3 172:19  
   172:22 180:13,15  
   195:1,5 201:17,20  
   204:6,9 206:10,16  
   208:17,20 210:8,12  
   214:20 215:1 216:12  
   216:15 218:12,16  
   238:18 240:1 242:9  
   251:16 259:6 260:4  
   269:9 271:1  
 markets 220:12  
 marking 94:10  
 Marsha 312:9 328:14  
 Martha 3:20 215:6,7,9



- 215:11,12 216:1  
**Martin** 319:17  
**Mary** 35:14,21 37:17  
 122:5  
**Maryland** 14:3  
**mass** 49:11,12 53:11  
 71:9 81:22 82:4  
**massive** 125:22  
**match** 312:9  
**matching** 286:15  
**material** 144:2 180:6  
 203:2 209:12 336:18  
 339:12  
**materials** 159:12,13  
 181:9,10 202:15,20  
 202:22 204:21 209:13  
 212:13,16 215:18  
 217:11,12 219:10,11  
 220:9 240:22 243:3  
 245:7 246:14 250:11  
 263:17  
**matter** 1:4,9,18 7:19  
 14:12 26:18 78:20  
 85:21 112:2 132:13  
 141:3 185:5 265:4  
 338:13 344:15 345:3  
 345:4  
**matters** 171:14 201:2  
**Matthew** 2:9 91:2  
**Maureen** 4:3 14:10 15:4  
 15:10,22 17:5 18:9  
 77:8 98:22 242:10,12  
**McBride** 81:17,18 82:3  
 108:11 111:7  
**McKay** 319:7  
**McNeely** 3:15 158:2,4  
 158:15 167:15 168:1  
 168:4,4,13 169:5  
**McNeely's** 172:2  
**MDs** 186:4  
**mean** 28:12 31:22  
 33:19 39:10,11 44:22  
 48:10 51:1,21 52:19  
 55:19 58:12,20 65:13  
 65:16 75:10,12 77:8  
 78:8 82:11 85:10 86:8  
 88:19 91:19 92:6,12  
 95:5 97:3 98:8 100:4  
 101:1 107:6,7 113:14  
 136:18 139:20,21  
 145:19 171:19 197:4  
 199:13 200:7 203:17  
 203:18 226:13 228:15  
 229:19 231:13 254:7  
 254:12 256:22 258:4  
 305:2 310:8 324:6
- 329:10  
**meaning** 203:5 248:1  
 312:14  
**meaningless** 337:4  
**means** 7:7 8:20 75:12  
 110:15 113:16 283:22  
 308:15  
**meant** 51:17 99:16  
 140:18 337:3  
**Media** 97:7,17,18 99:5,6  
 242:19,20 243:4,5  
 244:18 245:17,22  
**meet** 278:16 343:2  
**melding** 332:10  
**memorialization** 271:8  
**memorialized** 275:15  
**memory** 311:9 327:11  
**mention** 87:20,22 88:8  
 89:1,4,10,20  
**mentioned** 16:17 22:17  
 58:7  
**Mercury** 268:6  
**merely** 52:21 123:14  
 201:8 272:19  
**merge** 49:19,21  
**merged** 49:16  
**mesh** 306:11  
**messages** 15:11,12,13  
**messed** 214:14 318:17  
**Messinger** 319:17  
**met** 197:5 221:8  
**methodological** 88:9  
**methodology** 88:22  
**Meurer** 213:13 217:4  
**Mexico** 259:4  
**mic** 130:22 214:15  
**microphone** 18:19  
**mid-August** 246:20  
**middle** 345:18  
**midst** 130:20  
**miffed** 237:8  
**Miles** 8:17 9:5  
**Millen** 4:3 14:11 15:22  
 16:6 17:5 18:11 22:18  
 22:21 77:8 242:10,12  
 242:14 245:6 246:14  
 248:14,16  
**Millen's** 16:14 243:11  
**mind** 249:2 262:21  
 347:1  
**mine** 8:22 45:10 163:3  
 163:5,8,12 164:11  
 165:11 175:22 211:8  
 213:16  
**minuets** 128:4  
**minute** 78:18 122:11
- 124:7 139:15 174:16  
 317:10  
**minutes** 7:7,8,9,11,11  
 7:13 22:18 132:1,4  
 141:11 223:14,21  
 265:3 323:15  
**MIPCOM** 220:12  
**Miracle** 3:14 133:19  
 135:8,10,12 136:4,7,9  
 136:13 137:3,7,14,15  
 137:16 138:3 145:14  
 145:16,20 146:7,15  
 146:18,20 147:1,13  
 147:16,17,19 148:1,9  
 148:15,19 149:10  
 252:11 284:7  
**mischaracterization**  
 308:1  
**mischaracterizes**  
 148:22  
**misdated** 124:8  
**misleading** 73:3  
**misrepresentation**  
 170:11  
**misrepresentations**  
 169:19 170:9  
**misrepresenting** 62:9  
**missing** 51:8 163:4  
 212:12 311:19  
**misspoke** 236:21  
**misstated** 57:1  
**misstates** 68:13  
**mistake** 8:20 10:4  
 192:14,16  
**mistaken** 341:22  
**Mister** 207:15  
**misunderstanding**  
 272:14,18  
**misunderstood** 129:14  
 273:22 274:14  
**Mitchell** 2:20  
**mixed** 95:22  
**moment** 62:11 70:3  
 90:15 199:11 326:4  
**moments** 191:6  
**money** 17:17 119:22  
 120:12  
**month** 39:22  
**morning** 19:9,22 78:15  
 91:1 345:11,21 347:4  
 347:6  
**mother** 20:10  
**motion** 2:17 135:14  
 137:18 245:13 286:6  
 286:14  
**motions** 278:17
- Mountaintop** 219:17  
**move** 19:7 32:18,18  
 44:9 47:12 80:4 86:18  
 103:18 109:7 123:2  
 134:5 151:16 162:7  
 165:16 168:18 172:6  
 175:8 187:15 196:17  
 203:16 205:19 208:2  
 209:22 213:3 216:3  
 218:3 220:15 235:12  
 237:11 239:12 241:21  
 244:4 250:7,13  
 252:19 259:15 260:10  
 276:10 279:11,13  
 294:9 296:10 301:6  
 305:14 344:14  
**moved** 14:18 32:20  
 190:2 309:7,16,17  
 310:2,5  
**movies** 162:3  
**moving** 139:3  
**Moyer** 232:11,12,19,22  
 234:22 236:3 237:8  
**MPA** 132:13  
**MPAA** 4:8 7:7,7 20:1  
 26:14 34:3,12 40:20  
 43:9 44:17 47:19 57:8  
 57:19 78:12 83:17  
 90:8 94:14 106:10,21  
 107:12,16 108:4,7  
 109:8 110:10,21  
 112:11 116:17 127:21  
 128:4,8,16 133:1,7,9  
 134:9,10 136:10,12  
 136:15,21 137:2,11  
 139:5 140:1 142:6  
 143:12,19 144:22  
 145:9,18,21 146:18  
 146:19 147:4,11  
 148:2,4,11 149:15  
 150:8,13,14,22 152:6  
 153:22 154:2,17  
 155:17 156:8 159:12  
 159:15,19 160:1,1  
 161:4 162:10 169:17  
 173:20 174:1,21  
 177:14 180:6,7 181:9  
 181:20 183:3,15  
 184:3,8,21 185:22  
 186:3 188:12,21  
 189:9,10,19 190:8,17  
 190:22 191:6 192:4  
 202:15,19 203:7  
 204:20 207:6 209:12  
 209:14 212:13,15,16  
 215:18 217:12 219:10

221:21 222:6 228:11  
 234:14 237:4 240:22  
 243:3 244:17 246:17  
 246:19 247:2 252:13  
 256:18 257:4,10  
 263:17 264:6,7  
 267:14,19 268:2,16  
 269:5,16 270:7,18  
 271:3 274:8,11  
 279:15 280:6,16,17  
 281:1,6,10,18 282:22  
 283:2,9,14,17,20  
 284:2,12 285:10,16  
 287:10 288:2 290:20  
 291:18 294:10,19  
 295:3,12 297:15  
 302:19,21 303:8  
 306:13 308:16,21,22  
 309:4 311:7,11,17  
 312:2,14 314:15,22  
 320:18 329:1,17  
 333:19 336:5 337:15  
 338:19 342:16,16,20  
 344:22  
**MPAA's** 136:11 148:22  
 170:6 247:5,8 268:13  
 292:5 324:8 342:21  
**MPAA-produced** 196:3  
 293:4  
**MPAA-represented**  
 137:22 143:15,21  
 287:3  
**multiple** 226:5 304:19  
 304:20 317:17 322:12  
**museums** 14:4  
**Mysteries** 217:5 249:2  
**mystery** 222:16

**N**

**N** 2:10,11,21  
**N.W** 2:21  
**name** 19:22 60:10 71:8  
 79:21 80:1 117:8,14  
 133:17 228:4,12  
 254:22 255:1 280:3  
 284:5 296:20  
**named** 250:21  
**names** 138:10,14  
 244:16 267:10,16,17  
**narrative** 15:21 83:11  
 307:1  
**narrow** 262:14 296:4  
**NATPE** 220:12  
**nature** 168:5 263:6  
**NBC** 182:3 184:14  
**necessarily** 31:20

51:16 57:4 144:8  
 222:21 230:6,20  
 254:1,20 282:14  
 284:16 342:22  
**necessary** 51:13 53:7  
 56:5,15 57:4 62:14  
 224:19 253:19 254:5  
 339:18  
**necessity** 51:21  
**need** 30:4 42:13 61:5,9  
 61:16 62:17 68:22  
 90:16 111:22 114:16  
 116:18 131:2 134:3  
 138:5 140:5 142:7  
 166:18 175:6 198:22  
 199:3 222:19 225:19  
 230:6 248:6 278:22  
 319:9 323:17,18  
 324:4,5 346:5  
**needed** 50:9,13,20 53:3  
**needs** 254:2  
**Neely** 158:7  
**neither** 153:15  
**network** 189:4 221:7,15  
**never** 82:2 92:3 106:7  
 120:4 123:6 168:14  
 186:12 191:6 192:8  
 254:17 307:4 343:2  
 347:1  
**new** 53:17 61:5,9,17  
 122:6 153:9,13 219:1  
 278:17  
**nice** 13:14 14:9  
**night** 7:20 10:19  
**nine** 132:3 163:12  
 165:5 347:5  
**Ninety-nine** 20:6,7  
**non-claimant** 119:11  
 119:13,16  
**non-claimants** 119:8  
**non-IPG** 68:15 118:22  
**non-responding** 60:18  
**NONNETTE** 2:20  
**normally** 114:5  
**North** 258:13  
**Nos** 43:10  
**notations** 318:13  
**note** 75:4 105:1 142:3  
 165:19  
**noted** 10:18 74:17 86:5  
 87:10 176:19  
**notes** 44:6,21,22 45:1  
 60:10 115:4,5 191:19  
 191:20 192:6,19  
 299:15 326:11  
**notice** 1:19 3:22 4:9

28:18,21 29:10,11  
 38:21 94:15 113:2,8  
 117:3,12,22 118:1,5  
 120:15 164:13 166:14  
 166:21 173:4 232:9  
 262:4,11 263:16  
**noticed** 165:4  
**notices** 264:7  
**notified** 117:18  
**notify** 36:21 117:8  
**November** 28:22 29:12  
**number** 11:14 15:12  
 16:6 42:11,12,20  
 51:14 60:10 101:18  
 101:21 102:22 111:8  
 119:21 125:6 133:18  
 138:9 139:7,9 144:4  
 145:11 157:2 169:16  
 256:16 257:18 272:1  
 306:7 310:1  
**numbered** 168:20  
 172:9 244:9  
**numbers** 42:21 87:3,4  
**numerous** 188:20  
 268:5  
**NW** 2:11,14

**O**

**O** 2:19 228:3,4,4  
**o'clock** 132:3 346:3  
 347:4,5  
**oath** 129:4 316:3  
**object** 28:5,17 33:13  
 42:1 62:8 66:2 67:9  
 80:6 88:12 99:15  
 103:20 148:20 169:7  
 169:21 175:18 198:7  
 199:18 205:20 222:8  
 245:1 250:7 253:2  
 305:18,21 310:21  
**objected** 26:16 186:22  
**objecting** 63:3 120:11  
 222:9 310:11,12  
 311:1,14  
**objection** 15:17 16:13  
 19:10,11 28:9 29:17  
 30:2,9 31:1,19 32:21  
 33:21 37:22 38:12  
 42:4 44:12,14 47:14  
 47:15 56:18 67:21  
 71:1 81:3 82:15 84:8  
 86:1 87:9 89:5,7,14  
 89:15 90:1,2 99:17  
 101:8 104:17,19  
 109:9 111:4,5,14,15  
 111:17 117:19,20  
 120:6 123:3,16  
 134:15,18 155:16,20  
 162:11,12 168:20  
 172:8,10,11 174:6  
 175:9 176:18,22  
 177:8 182:12,12,13  
 182:14,18 183:12  
 186:18 187:2,16  
 196:11,18 199:22  
 201:6 203:18,21  
 206:2 207:20 208:3,5  
 208:6,10 210:1,2  
 213:4,5 216:4,5 218:4  
 218:5 220:16,17  
 223:10 231:3,9,13,17  
 235:6 237:12 239:13  
 239:14 241:22 242:1  
 243:17 244:6,9 246:2  
 247:15,16,17 248:15  
 248:20 250:3 252:21  
 253:1 256:7 259:16  
 259:17 260:12,13  
 261:4 272:11 276:5  
 277:14 278:8 279:15  
 279:17 306:1,22  
 310:7 311:3,4 312:21  
 315:10 333:9 344:17  
 345:22 346:1  
**objection's** 170:13  
**objections** 33:4,5 131:6  
 131:8 252:21  
**obligations** 247:11  
**observe** 165:22 227:16  
**observed** 180:7  
**obtain** 178:8 189:7  
 203:11 205:5 229:19  
 229:22 233:22  
**obtained** 246:6  
**obvious** 85:21 146:12  
 235:4  
**obviously** 179:12  
 235:13 236:14 256:15  
 344:18  
**October** 246:12 247:5,6  
 253:7 254:18,19  
**offer** 32:1 42:9 54:7  
 133:22 134:4 194:13  
**offered** 26:19 80:15  
 112:17 141:19 152:15  
 172:3 175:3 187:8  
 220:9,11 274:17  
 303:21 326:9  
**offering** 82:17 313:9  
**office** 108:18 121:18  
 166:6 202:5 203:20  
 205:6 209:6 214:21

321:12 330:15 333:1  
**Office's** 203:12  
**officer** 181:2 300:16,18  
 300:19 301:3,4 317:3  
 320:2 321:11  
**offices** 229:22 259:3  
**official** 36:12 117:22  
 118:4  
**oh** 19:6 23:4 26:5 32:11  
 32:22 42:19 45:11  
 50:11 58:19 60:5 78:3  
 86:9 88:2 93:18,18  
 101:22 107:14 116:9  
 121:9 129:13 135:6  
 140:17 176:22 214:12  
 248:9 260:10 270:12  
 275:4 299:14 315:21  
 319:21 325:21 329:12  
 333:8  
**okay** 8:3 9:16,20 16:2  
 18:20 20:5,12,21 21:6  
 21:16,17,22 22:10,15  
 23:6,11,19,22 24:10  
 24:14,18 25:14,18  
 26:6,13 27:16,20 28:1  
 29:6,16 32:11 34:16  
 35:9,12 36:4,15,17  
 37:16,18 38:22 39:3  
 39:19 40:11,22 41:10  
 41:15 43:2,14 44:1  
 45:7 46:5,8 47:7,17  
 48:17,20 50:6 54:16  
 54:20 55:5,12 56:11  
 57:22 59:22 60:14  
 61:18,18 62:21 65:4  
 66:12 67:2,3 70:15  
 72:14 73:8,20 74:8,13  
 76:8,13 77:20 78:10  
 79:17,20 80:3 82:16  
 86:11,18 87:16 88:3,6  
 88:17 89:1,18 103:3,8  
 113:15 116:15 121:12  
 122:13 125:13,17,20  
 126:2,8,19 127:4,22  
 128:10,14,22 129:18  
 137:20 140:19 142:3  
 142:9 144:16 146:2  
 149:4 160:18 166:22  
 167:7 179:20 180:17  
 200:15 206:4 208:22  
 214:12 225:18 228:14  
 238:4 243:21 253:20  
 254:11 255:16 261:3  
 261:6 264:19 266:22  
 276:4 277:18 278:19  
 280:9 281:10 283:7,8

284:11 285:14 286:5  
 287:6,10,18,21 288:5  
 288:13 289:11 290:12  
 291:2,9,9,15 294:9,21  
 296:10 297:22 298:15  
 298:16,19 299:1,2,21  
 300:22 301:20 302:12  
 303:2 304:4 305:6  
 306:19 314:10 315:19  
 316:11 317:13,16  
 319:18 321:15 324:3  
 324:13,16 327:7  
 328:8 329:9 334:5,18  
 334:18 340:19 342:19  
 346:2  
**Olaniran** 2:19 3:4,7,9  
 19:5,21 20:1 25:4,8  
 25:18,20,21 27:7  
 28:16,20 29:5,8,21  
 30:6,14,20 31:6 32:8  
 32:17,18 33:2 34:1,6  
 34:22 35:5,8 38:4,16  
 41:1,3,16,19 42:6,17  
 42:21 43:15 44:9 45:8  
 45:14 46:6,8,12,13  
 47:12,17,22 54:10,17  
 56:21 57:7 63:8,11  
 64:6 66:6,8 68:5,6  
 69:1,13 71:4,7 74:15  
 77:21 78:3,5,9,16,19  
 79:4,5,6 80:4 82:17  
 82:19 83:2,6,14,21  
 85:2 86:6 87:15 88:16  
 89:9,18,19 90:10  
 104:18,19 123:3  
 127:9 128:9,11  
 129:10 131:9,12  
 270:11 272:9 273:18  
 274:18 275:21 280:1  
 280:2,3,5,11 282:17  
 292:19 299:13,22  
 300:1 301:10,14  
 302:13,14 304:10,12  
 307:22 308:6 309:5  
 309:15,19,20 310:13  
 310:16 313:11,12,15  
 313:22 314:4,19  
 315:3,8 316:10,16,18  
 321:10,14,20 322:1  
 323:2,11 324:14,17  
 325:4,7 333:9 336:3,8  
 336:13 337:1 338:5  
 338:15 339:14 340:2  
 341:5 344:11 345:3,4  
 346:20 347:3,7  
**Olaniran's** 111:16

**old** 320:5 336:12  
**omitted** 42:8  
**Omnimedia** 215:12  
**once** 15:4 42:9 92:4  
 124:20,21 189:7  
 236:16  
**one-by-one** 58:19  
**ones** 8:6 56:15 183:7  
 192:18 225:11 256:20  
 279:6  
**ongoing** 113:3  
**online** 202:4  
**open** 219:15,21 278:16  
**opened** 226:5  
**operation** 321:9 336:9  
 336:10 338:17  
**operations** 321:5  
**opinion** 80:9,16 84:10  
 85:10,11,19 86:2  
 114:19 237:18  
**opinions** 85:13  
**opportunity** 6:8 123:5  
 230:10 271:3 273:2  
 276:15  
**opposed** 148:2,4,5  
 180:9 325:2,4,6  
**option** 340:5  
**oral** 223:14  
**orally** 248:1  
**orange** 54:21  
**order** 55:15 133:8  
 135:16 142:6 154:18  
 161:5 164:15,15  
 184:22 190:7 191:14  
 192:1 209:18 224:11  
 227:14 246:21 270:16  
 276:10 287:7,10  
 297:16 321:7 322:22  
 324:9 331:12 333:6  
 333:18 335:7 336:15  
 339:7,9,18 340:20,21  
 342:9  
**ordered** 190:8  
**orders** 291:12  
**ordinarily** 223:5  
**organization** 333:20  
**organizational** 113:11  
**organize** 337:5  
**organized** 157:1  
**original** 17:9 111:4,14  
 111:15 239:3  
**originally** 6:4 178:11  
 179:13 327:13  
**originals** 229:7  
**Oshita** 18:3,12 22:17,19  
 98:13

**ought** 323:10  
**outcome** 80:10  
**outdoor** 158:9  
**Outdoorsman** 158:2,3  
 168:12  
**outside** 28:8 80:12  
 106:3,4 263:11  
 299:17 333:10 341:20  
**overcome** 31:19  
**overnight** 273:3  
**overnight** 17:12 28:10  
 30:12 31:21 32:3,21  
 33:22 62:21 63:5  
 84:11 88:14 98:5  
 123:17 170:13 177:9  
**owned** 143:15,16,16  
 203:10 209:10 211:16  
 234:1 245:21 328:4  
 337:20  
**owner** 20:3,5,13 117:15  
 118:11 133:5 136:6  
 137:8 138:2 140:4,9  
 144:8,9,14,15 145:6,8  
 145:8 147:12 152:12  
 152:13,14 153:17  
 154:3,4 155:6 156:9  
 156:10,20 157:6,18  
 157:20 158:1 160:8  
 161:20 162:5 164:1  
 168:12 188:14 189:21  
 190:10 205:12 206:21  
 209:7 236:6 257:10  
 268:17 269:5,6  
 282:15 283:1,3 284:4  
 284:13 285:8 287:4  
 294:18 295:3,4,11,12  
 296:2 297:5,9,11,18  
 298:7 300:9,13,20,20  
 301:5,17,19 302:16  
 302:18,20 303:10,12  
 303:20 320:3  
**Owner/Agent** 3:14  
**owners** 133:1 135:19  
 138:22 139:12 157:9  
 267:6 282:2,13  
 286:16 294:16 306:11  
 312:7 327:16 332:1  
 339:20  
**ownership** 144:1,5  
 147:19 180:10 181:21  
 188:8 203:8 205:9,22  
 212:18 219:14 221:16  
 222:2 241:11 283:11  
 284:19 285:2 296:15  
 302:22  
**owns** 137:16 204:17

- 215:9,11 233:10  
338:6
- P**
- P** 2:13  
**P-016** 139:18  
**P-17** 164:16  
**P-R-O-C-E-E-D-I-N-G-S**  
5:1  
**p.m** 141:4,5 265:5,6  
347:11  
**pack** 345:14  
**page** 3:5 30:15,16 32:6  
32:6 55:19,22 56:1,3  
56:7 81:10 84:15  
86:21 87:5 121:21  
150:5 152:2 157:2,22  
163:4,10,12 164:10  
164:11,12 165:5,6,16  
165:20,21 166:14  
189:15 210:17,19,21  
211:8,14 212:4  
213:12,12 214:2,10  
214:11 222:20 237:13  
237:15,16 238:8,9,11  
238:12 239:6 246:22  
259:13 278:4 290:11  
299:7,8,9 300:3  
302:10 306:3,5  
310:17  
**page's** 311:5  
**page-long** 189:12  
**pages** 34:17 35:10  
164:20 166:12 211:5  
214:5 222:22 225:3,5  
291:9 331:5  
**paid** 119:22  
**paired** 287:3,13  
**Pants** 211:18,19,21  
212:18,20  
**paper** 6:1 191:15 192:2  
193:10 257:9 306:14  
308:7 314:5,8 317:11  
328:13 332:13 335:21  
336:1 343:6  
**papers** 139:3 320:8  
335:22  
**paperwork** 20:17  
**paragraph** 55:18,21,22  
76:10,17 84:1 86:19  
86:20,21 87:12,18  
151:19 152:2 162:21  
168:20 169:12 172:9  
183:8 200:11 208:7  
240:16 244:10 248:21  
250:4,6,14 251:3  
252:22 255:7,8  
277:14 290:13,16  
**paragraphs** 250:7  
**Paramount** 81:17,19  
82:1 108:11 109:1,4  
111:6,7 116:19 117:3  
**paraphrase** 314:2  
**pardon** 5:4 19:6 36:7  
57:17 75:18 79:22  
95:11 135:7 270:13  
276:17 279:11 308:4  
**parent** 139:21 156:14  
156:15  
**Parent/Agent** 139:19  
**parentheses** 133:20  
139:18 284:5  
**parenthetical** 135:9  
**Parenting** 245:16  
**part** 17:5 60:20 66:12  
112:15 123:13 164:13  
166:10,16,21 174:18  
176:18 178:7,10  
179:9 185:8 192:10  
192:14 210:15 221:14  
228:21 233:13 255:5  
255:7 283:6 288:21  
320:19 335:21 346:14  
**parted** 261:19  
**particular** 49:3 53:1  
59:7 75:14 82:5 92:1  
95:17 114:3 115:7,9  
115:10 133:10,11,14  
135:18,18 144:13  
146:10 147:12 148:7  
149:18 151:6,7,7  
155:8 157:4,5,18  
161:18,21,21 168:21  
181:19 188:14,15  
189:4 197:17 202:13  
202:18 203:9 209:19  
209:20 221:22 224:14  
225:6 228:9 229:10  
247:1 248:22 255:11  
259:1 264:13 269:4  
283:3 287:5 295:5,9  
297:19 303:11 304:15  
306:12 314:20  
**particularly** 225:6  
250:3 326:12  
**parties** 129:15 139:10  
161:11 222:15 229:9  
247:2,10,20 254:1,15  
254:21 270:20 272:4  
273:2 287:6 331:1  
**partner** 300:17,19  
301:3,4 320:2  
**partnership** 300:10,13  
**party** 33:7 144:7 177:13  
247:1 255:11 272:12  
274:4 295:6 342:6  
**pass** 121:6 326:11  
**passing** 120:12  
**passive** 253:20  
**paste** 141:8  
**Patoce** 268:9  
**pause** 55:9 90:18  
165:14 211:3 213:19  
221:9  
**pay** 337:22 338:2  
339:21  
**paying** 101:20 102:4  
**pen** 135:7  
**penalty** 24:1 254:16  
**pending** 155:13 194:13  
**people** 12:11 14:17  
15:1,6 35:15 36:9  
59:14 70:16 77:11  
91:20 96:6 110:11  
116:3 197:8  
**percent** 20:5,6,7,9  
118:11 152:20 323:6  
**percentage** 87:14  
150:20,22 152:19  
**perfectly** 223:5  
**period** 11:13 49:3 52:6  
107:9 142:6 178:15  
235:21 317:6 342:15  
**periodically** 197:9  
**perjury** 24:2 254:16  
**permissible** 326:19  
**permission** 100:21  
165:16  
**permitted** 223:6  
**perpetual** 100:11  
**person** 49:16 53:15  
60:11,12 64:3 75:20  
117:16 197:5,14  
198:5 251:20 322:15  
**personal** 13:11 22:12  
144:12 164:5 200:8  
200:11,14  
**personally** 11:18 197:2  
254:8,9,10  
**personnel** 14:18  
**persons** 57:9  
**pertained** 330:17  
**peruse** 226:20  
**PGA** 220:2  
**phase** 1:5,7,10,12  
14:17 74:22 130:21  
131:11  
**phases** 13:19  
**phone** 53:16 61:22  
63:17 333:15  
**photographs** 228:22  
**Pick** 2:4 346:15  
**picture** 2:17 8:18 9:6,10  
9:12 135:15 137:18  
245:13 261:17  
**Pictures** 82:1 108:11  
109:1,4 116:19 117:3  
**piece** 110:9 120:15  
146:13  
**pieces** 51:7  
**piles** 308:7  
**Pillsbury** 2:10  
**Pittman** 2:10  
**place** 8:21 10:4 20:20  
26:18 78:14 229:9  
322:13 332:19 333:12  
345:13  
**placed** 248:20  
**plain** 219:16  
**plan** 131:15  
**planning** 129:7 131:13  
264:20  
**pleading** 29:3,13,16  
30:1  
**please** 5:3 17:1 24:20  
26:13 27:8 28:3 30:15  
36:17,18 43:19 46:17  
54:18 62:18 67:17  
68:4 75:4 79:1,14  
109:14 112:5 135:10  
141:6 151:10 152:1  
154:6 160:9 163:15  
167:12 170:21 172:19  
176:15 201:16 204:5  
206:10 208:17 210:8  
214:19 216:12 218:12  
221:11 223:19 238:17  
239:22 242:8 251:15  
260:3 265:7 299:16  
309:18 319:13  
**pleased** 77:1  
**plenty** 77:9 123:5  
**Plov-nick** 228:5  
**Plovnick** 2:19 19:10  
42:22 43:3 78:1,4,7  
78:10 117:20 134:6  
134:14 142:5 148:20  
149:5 155:16 162:9  
163:8 167:1 168:19  
170:5 172:7 175:9  
182:17,21 183:11,13  
185:6 186:12 187:1,3  
187:16 188:1 191:5,8  
192:17 193:3,10,14

- 194:9 196:18 203:17  
205:20 208:5 210:1  
213:4 216:4 218:4  
220:16 228:2,5,6,7,8  
228:16 229:13,19  
230:17 231:2,5  
237:12 238:1 239:13  
241:22 244:8 247:3  
248:11 252:20 259:16  
260:12 261:5 271:11  
275:9,19 277:13  
279:14 290:2 321:21  
321:22 322:2,12  
323:1,7 324:12  
334:12,14,21 335:3,8  
335:14,16 336:1,7,11  
**Plowman** 4:3 251:17  
252:15 253:16  
**point** 9:14 11:7 25:4  
41:16,19 52:10 60:7  
61:10 68:21 74:10  
83:14 101:19,21  
102:2 104:22 185:13  
186:2,9,10 202:21  
222:7 224:1 230:5,7  
231:16 234:6 240:21  
243:2 246:2,13 247:4  
247:10 258:6,8 260:2  
260:9,15 261:11,12  
261:20 262:17,17  
272:12 273:10 287:22  
296:11 310:5 320:14  
321:19 324:18 328:14  
336:3 337:2 338:5  
340:15 341:1,8  
**pointed** 141:7,11 220:8  
276:1  
**pointing** 211:11  
**points** 110:20 111:20  
185:22 274:18  
**PolyGram** 268:10  
**poor** 113:11  
**Pope** 330:12  
**Pope's** 330:15  
**portion** 130:17 141:18  
237:22  
**posed** 67:14  
**position** 177:20 197:11  
197:19,21 198:13  
336:19 337:11,11,12  
**positions** 37:13  
**possession** 222:16  
**possibility** 176:6,8  
**possible** 59:16 67:6  
68:14 157:19 176:5  
186:16 271:15 345:18
- Possibly** 39:10  
**post-dated** 262:21  
**post-termination** 67:11  
**practice** 113:7  
**practices** 112:15  
**pre-marked** 304:11  
319:5  
**pre-ordained** 84:5,7  
85:7  
**preceded** 305:11,12  
**preceding** 200:11 251:2  
**precise** 120:22  
**Precisely** 308:10  
**preclude** 310:22  
**predicated** 240:15  
**predominantly** 267:20  
**prefacing** 188:10  
**prefer** 42:7 48:17 226:1  
**preferring** 71:21  
**prejudiced** 169:8  
275:22  
**prejudicial** 273:19  
274:14 275:21  
**premarked** 26:14 41:5  
43:17 46:15 79:11  
**premature** 149:1  
**prepare** 115:11 149:22  
169:9 254:2,4,7  
271:22  
**prepared** 79:17 84:13  
145:10 252:17 253:16  
253:21 280:21 288:10  
329:15  
**prepares** 115:21  
**preparing** 48:7 115:16  
234:22 292:3  
**present** 95:5 130:7  
223:8 237:19 257:20  
**presentation** 88:10  
89:22  
**presented** 84:6 85:8,17  
138:10 212:7 229:2  
297:4,9 302:16,17  
**presenting** 310:3  
**President** 319:16  
**press** 8:12  
**presumably** 268:21  
**presume** 136:20 147:2  
293:12  
**presumed** 292:8,12  
**pretty** 52:5 53:10 87:17  
131:8  
**previous** 26:21 87:5,12  
87:18  
**previously** 10:10 26:16  
143:4 226:7 313:1  
318:4  
**Prime** 183:2,3,15,16  
191:11 192:9  
**principal** 217:3 218:22  
232:19  
**principle** 110:17  
**print** 224:11 310:18  
**print-out** 300:21  
**printed** 246:22 255:1  
312:8  
**printing** 225:5  
**printout** 202:4 209:6  
212:5 214:21  
**prior** 11:2 21:2,6,9  
120:10 157:8 176:4  
178:3,14 210:16,17  
**priority** 51:18  
**privilege** 153:6  
**privilege** 341:10  
**Pro** 15:5  
**probably** 18:21 50:14  
53:22 59:3,10 74:5  
76:1 91:16 128:12  
131:4,8 134:3 142:8  
150:4 255:8 262:7  
346:13  
**Probative** 251:10  
**problem** 102:4 189:10  
192:12 275:21 325:9  
**problems** 88:10 89:21  
113:11  
**procedural** 72:8  
**procedure** 276:5  
**proceeding** 31:3,4  
34:13 48:7 73:22  
74:22 77:17 84:7 85:7  
94:18,21,22 95:4,5,13  
95:19 96:17 103:22  
112:9 131:11 138:1  
148:13 153:15 158:17  
159:14 176:4 177:3  
179:4,13,17 183:15  
186:13 190:21 191:2  
192:8 226:15 252:10  
291:1 295:16,17  
314:15 323:15 324:2  
332:2,17 336:6  
**proceedings** 4:11  
13:14,15,18 14:1,13  
14:17 15:18 72:3  
79:16 84:4 98:21  
108:18 137:11 146:8  
147:5 150:12 153:20  
159:16 171:15 173:18  
179:14 231:14 232:21  
234:21 236:13,13  
279:1 312:15 323:5  
330:17 342:18  
**proceeds** 236:10  
**process** 12:18 60:16  
63:8,10 64:7 65:5  
66:21 69:5,17 70:19  
113:4 114:12 331:18  
332:14,18  
**processes** 124:19  
323:18 328:20  
**Producciones** 268:9  
**produce** 40:12 123:5  
133:9 191:13 225:22  
231:6 250:16 272:3  
287:11 296:1 333:16  
341:9  
**produced** 23:3 40:16  
40:19 132:12 134:9  
134:10 135:14 143:13  
154:17 161:4 169:6  
184:20 192:3 203:2,7  
208:9 209:18 217:5  
221:21 222:14 227:9  
227:12 228:10,11,12  
231:7 246:19 247:2  
247:12,14 264:1  
274:16 276:14 285:22  
297:15 303:5,9,22  
307:4 311:13,15,16  
313:13 318:5 322:6  
324:8 336:14 340:10  
340:20 341:2  
**producer** 153:15  
**Producers** 2:3 36:22  
121:22  
**producing** 162:3  
290:21  
**product** 341:10  
**production** 149:1 202:8  
228:9 241:15,16  
245:17 246:7 276:10  
278:10  
**Productions** 3:14,22  
133:19 135:8,12  
136:4,8,9,13 137:4,7  
137:14,15,16 138:4  
145:14,16,20 146:7  
146:15,18,20 147:1  
147:14,16,18,19  
148:1,9,15,19 149:10  
158:8 195:12,14  
197:9,12,22 198:4  
205:13,17 213:14  
217:4 232:10,15,20  
233:6,10 236:4  
245:18 284:7 319:16

**proffer** 109:11 112:14  
 112:17 270:14 271:6  
 271:15 278:16  
**program** 4:13 11:8 13:6  
 52:1,3 61:15 71:19  
 133:10,15 135:17  
 137:22 139:4 151:5,6  
 152:6,8,16 155:2,3  
 157:2,4 158:2,3 163:1  
 168:22 171:16 181:15  
 190:6,11 196:4  
 202:18 203:9 204:15  
 205:9 208:8 209:14  
 209:19 215:20 224:3  
 226:3,4 233:11 234:1  
 234:6,17 236:5  
 240:19 243:8 244:11  
 244:18,22 252:10  
 257:6,19 268:16  
 269:4 277:22 278:1  
 283:11,16 287:5,14  
 297:19 303:11 308:11  
 311:15,15 312:5,7  
 327:16 331:8  
**Programing** 3:22 232:9  
**programmer** 49:18  
**programmer's** 58:5  
**programmers** 258:17  
 258:19,20  
**programming** 11:6  
 20:16 148:12 153:16  
 162:5 180:10 212:19  
 217:14 219:12 233:9  
 240:17 243:5 252:6,9  
 264:1 269:7  
**programs** 11:8,11,13  
 12:12 52:2,16,18 61:4  
 61:11 137:10,17  
 143:15,16 144:15  
 147:12,20 154:3  
 157:18 161:21 164:1  
 169:10 186:5 188:9  
 188:13,21 189:14,17  
 212:15 219:22 221:5  
 221:21 239:7 250:22  
 256:17 257:3 267:21  
 283:1 293:5 295:7  
 297:17 300:21 306:4  
 306:5,7,12 307:6  
 312:6 327:15 328:3,3  
 328:11 330:21  
**project** 133:15  
**projects** 308:9  
**promotion** 118:1,7  
**prompted** 290:5  
**promptly** 6:19 142:14

**pronounce** 296:20  
**proof** 32:1  
**proper** 80:22  
**properly** 213:22 236:19  
**properties** 160:2 266:7  
**property** 267:5  
**proposed** 273:8  
**prospective** 220:13  
**prospectively** 39:12  
**prove** 249:9  
**provide** 69:6 72:2  
 163:14 190:8 217:21  
 245:6,10 255:5  
 266:12 270:19 271:3  
 274:5 278:22 315:16  
 325:12 339:1  
**provided** 22:19,20  
 27:19 41:4 53:20 57:8  
 57:12,15,19 71:13  
 73:17 133:7 137:2  
 144:18 152:8 159:13  
 168:16 180:6 181:9  
 184:6 188:12,19  
 189:9 193:8,14  
 207:12 215:18 226:3  
 227:5,11 229:12  
 245:12 246:3,13  
 249:22 263:18 264:8  
 267:3 268:14 269:16  
 270:17 274:5 276:6  
 276:11 281:1,6,10  
 293:8 302:1 307:11  
 309:3 313:7 325:15  
 339:5  
**provides** 339:18  
**providing** 270:14  
**provisionally** 83:12,18  
 271:1  
**public** 30:21 104:4  
 203:20  
**Publishing** 258:7,9  
**pull** 18:18 227:3 230:1  
**pulled** 280:14 281:11  
**pulling** 341:16  
**punishment** 175:7  
**purport** 132:21 215:10  
**purported** 133:4 136:6  
 150:16 155:6 156:10  
 156:20 257:9 266:14  
 268:17 282:1 295:2,3  
 295:4 297:11  
**purportedly** 174:2  
**purporting** 144:15  
 152:11 163:22 174:22  
 188:13 301:2  
**purports** 45:20 132:22

173:4 195:1 240:7  
 242:9 251:16  
**purpose** 82:18  
**purposes** 82:19 112:7  
 146:4 215:7 228:17  
 252:10  
**pursuant** 1:19 120:1  
 133:8 135:15 142:5  
 161:5 184:21 189:1  
 190:7 191:14 192:1  
 192:13 203:2 209:18  
 211:22 227:13 265:16  
 286:9 297:15 331:12  
 335:7 342:9  
**pursuing** 148:2 193:19  
**pushing** 186:6,7  
**put** 13:6 33:12 115:5  
 130:5 140:2 166:6  
 182:20 222:19 224:12  
 253:9 254:12 257:1  
 275:9 284:5 291:20  
 299:18 328:15 337:1  
 343:4  
**putting** 38:20 115:17  
 289:5

---

**Q**


---

**qualification** 162:19  
**quality** 342:3  
**quasi-governmental**  
 153:5  
**Questar** 251:17,18  
 252:1,3 256:5  
**question** 15:21 25:12  
 27:3 28:16 54:12 57:1  
 62:22 63:1,3,7,13  
 66:3,7 67:14 68:4  
 69:10 70:16 78:9 93:9  
 93:22 98:9 99:22  
 100:1,3 118:18  
 119:14 120:8 126:6  
 127:12 140:14 152:19  
 155:13 168:7 176:16  
 176:20 183:21 185:2  
 186:18 190:20 194:12  
 196:14 197:18 198:21  
 223:15 229:11 247:13  
 248:13 249:15,16,20  
 282:5,18 292:1  
 293:13 294:6,8  
 302:12 306:8 310:20  
 313:5,7 315:9 327:22  
 334:3 337:13 341:13  
**questioned** 307:8  
**questioning** 26:22  
 28:14 187:4,6,13

231:10 316:9  
**questions** 28:12 31:17  
 90:10,13 118:14  
 125:12 126:3,3 127:8  
 127:9,18 149:11  
 176:9 183:20 245:3  
 246:8 264:22 272:15  
 272:17 274:10 308:18  
 327:1 344:17  
**quick** 8:2 42:6 334:3  
 344:15  
**quickly** 270:13  
**quite** 11:20 13:13  
 101:18 250:5 264:9  
 309:6 333:21 340:3  
**quote** 21:10  
**quoting** 95:2

---

**R**


---

**R** 1:21  
**raise** 244:13 295:15  
 310:7,8 326:2  
**raised** 26:4 120:4  
 234:21 235:5,9  
 246:17 295:18  
**raises** 341:12  
**ran** 320:9  
**randomly** 76:18  
**Rasenberg** 35:15,21  
 122:5  
**rate** 250:6  
**ratification** 37:10  
**Raul** 3:6 14:20 15:11,12  
 17:20 20:19 21:10  
 36:10,19 77:13 79:19  
 84:13 85:15 96:8  
 114:6,10 115:19  
 116:1,7,9 118:11  
 129:3 143:2  
**Raul's** 44:8,8  
**re-ask** 120:7  
**react** 277:16  
**reaction** 171:22 177:17  
 207:18  
**read** 27:12,20 36:17  
 105:11 122:11,13  
 201:8 222:22 247:20  
 247:21 248:2 325:7  
**reader** 170:3  
**reading** 170:13  
**ready** 90:20  
**real** 7:1 8:2  
**realized** 102:14  
**really** 26:18 50:7,8,12  
 50:22 56:12 61:5 68:8  
 82:2 96:7,14 100:3

- 149:2 203:20 205:22  
284:11 329:21 330:3  
337:19 345:17  
**reason** 16:17 17:5 18:7  
66:13 67:9 87:2 95:1  
264:11 341:18  
**reasonable** 229:9  
**reasons** 176:3  
**rebut** 249:10  
**rebuttal** 127:21 128:3,8  
142:6 169:9 185:20  
246:17 247:5,8  
**rebutts** 110:19  
**recall** 10:21 17:7 53:20  
57:11 101:16,17  
117:5 122:2,15,20  
126:22 143:19 179:20  
194:8 202:16 203:1  
209:16 212:10 233:1  
246:13 256:3,4,6  
258:22 261:16 262:15  
264:12,13 265:13  
267:10 286:17 288:21  
291:21 304:2 308:2,6  
310:1 314:19 315:1  
327:18,19 332:21  
333:4,5  
**recalled** 18:12 119:20  
143:3  
**RECD** 3:10  
**receive** 113:8,21  
114:15 237:6 311:21  
**received** 19:18 34:4  
40:16 44:18 47:20  
75:20 83:19 93:4  
94:15 105:3 112:11  
123:22 133:2,13  
135:2 138:7 156:1  
162:15 170:18 172:16  
194:19 200:18 204:3  
206:7 208:14 210:5  
213:9 216:9 218:9  
220:21 238:14 239:19  
242:5 251:12 256:12  
259:21 261:8 262:4  
262:10 279:20 287:19  
305:6,7,11 344:22  
**receives** 110:14 113:1  
**receiving** 179:20  
**recess** 78:15,18  
**recipient** 35:18 48:21  
48:22 51:14,15 53:2,3  
58:17 60:19,19 62:5  
66:1,4,9,18,22 67:7  
69:16 70:21 75:16  
**recipients** 50:3,19  
57:16,20 59:8,17  
**recitation** 83:9  
**reciting** 301:9  
**recognize** 27:17 79:11  
132:17 249:22 259:7  
260:5 267:17 304:5  
**recognized** 304:16  
**recognizes** 84:16  
**recollection** 94:6  
126:17 151:19 152:3  
162:21 186:17 234:10  
257:5 266:1 268:5  
327:12 330:6  
**reconsider** 278:5  
**reconvene** 140:21  
**record** 7:22 30:22 33:4  
35:2 36:18 43:20  
46:18 78:21,22 86:1  
105:17 112:3,13  
116:6 123:20 134:6,9  
141:4 144:18 148:15  
148:17,22 149:6,7  
172:8 173:17 179:10  
182:20 187:2 203:20  
203:20 223:2,4 235:2  
248:17 265:5 269:22  
270:1 273:19 274:22  
318:22 322:9 324:22  
333:17 347:9,11  
**recorded** 7:6,9,11  
**recordings** 228:22  
**records** 18:4 62:2  
174:17 177:3,5 202:5  
223:4 247:22 332:13  
344:9  
**recovery** 17:16  
**recreated** 17:10  
**RECROSS** 3:2  
**RECROSS-EXAMINA...**  
127:13  
**REDIRECT** 3:2 118:15  
**redundant** 213:21  
**reference** 34:21 181:20  
244:10 251:2 282:6  
289:13,15,20  
**referenced** 169:11  
175:20 184:10 240:16  
276:22  
**references** 154:19  
175:13 212:5  
**referencing** 181:10  
282:19  
**referred** 93:10 137:2  
153:5 169:18 289:4  
**referring** 48:15 54:10  
54:15 83:8 87:3 116:7  
116:11 154:16 222:12  
225:11 237:21 239:2  
239:6 266:20 270:17  
276:18 282:13 289:2  
289:8  
**refers** 250:10  
**reflecting** 163:22  
**reflects** 237:1  
**refrain** 37:6  
**refresh** 151:19 162:21  
234:10  
**refreshes** 152:3  
**refreshing** 257:4 268:5  
**refused** 188:4  
**regard** 11:11 54:2 67:19  
71:18 96:4 113:5  
119:18 120:5 125:2  
126:6 128:7,16 177:3  
181:13 185:17 188:17  
244:14 257:14 258:15  
273:12 286:15 291:17  
297:2 298:9 303:19  
306:3 325:14  
**regarding** 3:22 79:15  
112:14 166:15 171:15  
172:9 173:5 182:22  
208:7 209:7 232:9  
244:9 247:22 326:13  
**Regional** 319:8  
**registrations** 258:3  
**rehabilitate** 123:15  
**rehabilitation** 112:8  
**reject** 6:9  
**rejected** 90:6,9 187:19  
187:22 188:4  
**relate** 215:5  
**related** 175:12  
**relates** 230:7  
**relating** 110:21 164:8  
**relationship** 110:17  
113:2,4 148:10,11  
152:18 181:4 195:13  
207:1,3 215:13 217:7  
219:3,7 232:17 233:5  
233:16 235:20 240:13  
283:13,16,20 284:12  
294:18 295:10,11  
**relationships** 267:5  
274:7 295:2  
**relevance** 31:5,20 80:8  
103:21 108:4 109:12  
109:16 175:11 182:13  
183:17 222:10 338:14  
**relevant** 16:18 17:3  
28:8,9 31:2 32:1  
33:21 49:2 111:20  
151:4 185:2,14  
338:18  
**relied** 249:7 291:16  
293:1,3  
**rely** 67:3 130:12 273:13  
292:20,21 297:3,6  
321:6 324:20  
**relying** 188:11  
**remain** 129:4 316:3  
**remainder** 255:4  
**remained** 65:21 66:12  
**remains** 344:17  
**remedies** 37:14  
**remedy** 60:8  
**remember** 21:11 33:10  
54:1 63:7 102:6 127:3  
176:22 262:12 299:17  
330:2,20 332:22  
333:15  
**remembered** 18:14  
**remembers** 18:6  
**remind** 169:15  
**removed** 213:21  
**removing** 166:12  
**render** 241:14  
**renew** 111:17 172:8  
187:16 194:13 208:6  
246:2 252:21  
**rent** 33:18  
**reorganizing** 130:20  
**repeat** 17:1 188:2  
323:17  
**rephrase** 66:6  
**replace** 34:12  
**report** 73:20  
**reported** 268:1  
**reporter** 16:22 327:6  
**reports** 73:2 329:17,20  
**represent** 24:7,15  
26:11 45:21 56:8 58:4  
91:2 111:1 120:19  
132:21,22 147:4  
150:16 152:11 155:5  
175:1 200:4 263:9,13  
266:15 267:6 294:12  
295:8  
**representation** 3:16 4:9  
26:4 34:12 37:1,20  
48:22 59:19 64:9 65:8  
71:21 89:3,12 99:12  
100:18 101:15 105:8  
105:14,18 106:4  
107:3 133:2 147:1  
166:15 173:5 287:2  
290:1,3 292:9 321:11  
322:18 324:22

- representations** 89:3  
 129:14 146:21 202:14  
 338:11  
**representative** 82:8  
 108:16,22 198:2,3,16  
 200:2 255:9 280:18  
 282:14 293:19 294:1  
**represented** 69:5 70:21  
 75:21,22 133:5,15  
 143:18,22 145:2  
 150:14,15,22 169:1  
 174:18 180:8 181:7  
 188:22 191:5 211:13  
 215:15 217:9 233:8  
 233:18 242:22 245:19  
 252:4 256:16 257:2  
 264:10 268:11,12  
 269:18 281:3 282:1,2  
 283:4,18 289:20  
 337:21  
**representing** 153:22  
 171:13 174:21 186:4  
 191:7 192:7 195:15  
 200:3 258:11,12,13  
 258:14 337:19  
**represents** 147:17  
 148:19 154:21 274:8  
**request** 6:18 37:5  
 149:22 153:10 194:14  
 226:9 232:22 275:10  
 326:10  
**requested** 17:8 190:1  
 286:15,17 311:17  
**requests** 49:7 278:16  
**require** 342:16  
**required** 133:9 224:21  
 335:7 342:13  
**requirement** 296:1  
**requires** 117:7  
**reserves** 37:15  
**residence** 345:14  
**respect** 22:10 26:2 48:7  
 92:19 301:15 317:4  
 326:8 329:8  
**respond** 28:6 59:18  
 60:2 66:22 170:5  
 224:1 276:7 308:17  
**responded** 11:2,10  
 21:9 58:10 63:21  
 124:13 308:22 344:3  
**respondent** 69:3  
**responding** 25:5 65:6  
 105:7,12 176:14  
 247:8  
**response** 16:9,17 18:7  
 42:6 55:15 59:21  
 60:17 61:20,22 62:1  
 63:15,16,17 69:6,20  
 111:16 123:11 126:4  
 154:17 188:10 196:9  
 196:12 227:10 240:8  
 240:10,12,13,18  
 241:1,12 246:16  
 252:16 286:13,18  
 287:6,18 301:7  
 322:21 324:8 329:16  
 333:6 340:20,21  
**responsibilities** 20:13  
 48:3,6  
**responsible** 166:1,7  
**responsive** 123:10  
 344:10  
**rest** 255:10,13  
**restaurants** 14:5  
**restricted** 299:10,11  
**rests** 127:21  
**result** 152:3  
**resulted** 234:22 286:6  
**resumed** 10:11 112:3  
 143:6 200:20 265:6  
**retired** 314:12,18  
 320:12 323:22 330:7  
**retransmission** 37:7  
 43:21 46:20 47:1 72:4  
 106:12 107:18,21  
 108:20 126:11 159:11  
 178:21 317:5 318:15  
 318:16 319:22 330:11  
**retrieval** 332:11  
**return** 141:1  
**returned** 328:13 329:17  
**revealed** 102:1 173:18  
 174:5  
**review** 115:13,16  
 174:17 180:5 234:14  
 253:18 273:3 303:19  
 304:13  
**reviewed** 132:12  
 168:22 169:5,11  
 188:18 244:11,21  
 248:14 277:7,21  
 278:1  
**reviewing** 7:19 29:22  
 159:12 181:8 207:6  
 263:17  
**revised** 254:22  
**revision** 253:18  
**revisions** 255:2  
**right** 6:10 21:20 24:16  
 25:17 26:11 27:4,15  
 29:6 34:13 43:6 45:21  
 47:2,11 48:16,22 50:4  
 50:21 55:12 62:15  
 67:5,11 68:10 71:10  
 71:14 72:5,6,8,16,20  
 73:3,13 75:1,1 79:10  
 86:13 90:19 91:7 92:6  
 92:19 93:6,11,15,19  
 95:7 97:11 100:13  
 101:2 103:10 104:21  
 105:9,15,19,22 106:5  
 106:8,13,18,19,22  
 107:4,14 108:5 110:8  
 118:12 119:14 121:9  
 121:11 125:14,16  
 126:12,15 127:4  
 134:4 140:15 151:12  
 152:5 154:20 167:6  
 204:22 209:8 215:3  
 216:17 225:12 231:11  
 232:6 238:19 240:2  
 263:10,20 266:22  
 268:6 275:1 284:20  
 285:16 287:1 289:22  
 290:14 291:3,9  
 300:10 303:7 310:10  
 315:16,17,18 326:6  
 329:14 332:19 342:12  
**right-handed** 125:18,19  
**rights** 37:13 75:13  
 137:9,13,16 146:6  
 153:8 159:8 179:8  
 212:22 234:3,9,12  
 236:1 237:2 263:11  
 266:14 282:14  
**Road** 3:22 232:10,15,20  
 233:6,10 236:4  
**roar** 131:7  
**Rodney** 218:13,14,20  
**room** 1:15 5:5 333:2  
 334:9 341:17  
**Ropes** 219:15,16,20  
**Ross** 101:14 104:1  
 105:7,8,13,19 106:5  
 106:22 107:2,20  
 119:19,21,22 120:3  
 120:11,12,16,17,18  
 120:19  
**roughly** 139:2,3 246:13  
**Roxanne** 197:15  
**royalties** 37:7 47:1  
 87:14 108:20 117:15  
 153:9,11 159:8,9,11  
 162:2 175:12 205:1  
 250:22 263:20 317:5  
 318:12,16 319:10,19  
 319:22  
**royalty** 1:1,6,11,22  
 23:17 25:7 39:8,16  
 40:4,9 43:22 44:3,10  
 46:20 72:5 106:12  
 107:18,21 117:3,6,9  
 117:17 126:13 318:19  
 330:11,18 332:1,14  
**rubber** 125:21 127:16  
**rule** 79:2 117:7,13  
 228:20 229:6 325:11  
**ruled** 278:14 295:22  
 296:6  
**rules** 247:21  
**ruling** 33:11 77:2 86:8  
 272:2 286:10 296:9  
**rulings** 76:16  
**running** 223:22 336:9  
 338:16,20  
**runs** 140:22
- 
- S**
- s** 105:7,13 107:2 120:18  
 305:12  
**S.A** 268:7,9,10,10  
**SA** 263:14,21  
**safe** 132:2  
**safely** 130:10  
**Sandra** 330:12  
**satellite** 1:11 4:10 11:6  
 11:12 43:1,3,4 46:19  
 46:22,22 47:5 107:17  
 107:21 126:10 178:20  
 178:21 183:6 191:11  
 292:7,7 305:11,12  
 317:5 318:16 319:10  
 319:19,22  
**Saunders** 3:8 183:5  
 184:18 185:7 189:13  
 191:10,16 285:11  
 286:19,21 306:2,8  
 307:9 308:2,7,11  
 312:1 313:6,19 314:5  
 314:7 315:17,20,21  
 316:2,4,7,11,14,19  
 326:7 327:1,10  
 341:13 345:5,8,10,20  
 346:20  
**Saunders's** 287:22  
 288:10,14 290:22  
 291:3 292:6 293:15  
 294:3 308:1 310:6  
 311:8 312:18 313:17  
 314:1,3,20 324:20  
 325:13 336:17 337:8  
**save** 303:14  
**saw** 93:2 120:14 181:19  
 192:18 222:18,22



248:18 250:16,17  
264:11  
**saying** 38:10 49:17  
50:17,17 51:3 59:6,9  
68:15 80:20 110:5  
111:10 120:19 147:7  
157:8 160:2,4 174:16  
188:10 193:7,7 200:8  
276:21 277:21 278:8  
290:2 304:18 309:15  
309:22 312:20 313:21  
313:22 338:10,12  
339:11,16,20  
**says** 9:7,9 11:1 38:14  
39:12,14 74:17 75:3,4  
75:11 82:9 84:15  
103:17 108:14,15  
133:18 135:6 140:9  
156:11 157:11,14,15  
158:1 166:13,14  
168:21 189:13 198:1  
199:22 200:1,11  
205:15 228:21 229:6  
250:6 290:20 298:7  
301:9 317:14  
**scenario** 186:2  
**schedule** 239:7 345:6  
**scheduled** 6:16  
**scheme** 72:5  
**Sciences** 181:3,5,11  
182:11  
**scope** 28:8 31:2 80:13  
333:10  
**scrambling** 336:14  
339:5  
**scrap** 330:15  
**Screenrights** 296:19  
297:2,4,8,18 298:3,8  
298:9,21 300:4  
301:17  
**Screenwrites** 144:21  
152:22 153:2,4 155:3  
156:17 157:5,12,14  
157:15,17 158:1,16  
158:21 159:7,9 162:1  
168:4,8,15 171:20  
172:3  
**scrutinize** 146:22  
**SD** 1:11  
**SDC** 4:16 7:12 19:12  
40:20 102:19,20  
103:19 104:15 105:4  
110:21 121:2 142:7  
142:14 231:7 271:17  
**SDC's** 222:15  
**SE** 1:17

**search** 203:19 210:18  
288:17,18  
**searchable** 325:17  
**searches** 223:22  
**seated** 5:3 67:17 79:1  
112:5 129:5 141:6  
265:7  
**second** 34:19 35:12  
45:16 55:22 73:9 84:1  
121:21 150:5 166:2  
175:13 182:14 189:5  
210:19 212:4 214:2  
214:11 233:19 238:9  
238:12 290:13,16  
298:1 299:9 306:3  
311:5  
**secondary** 153:7,8  
159:8  
**Secondly** 247:15  
**seconds** 27:8 130:20  
343:8,13  
**Secretary** 15:7 319:17  
**section** 74:17 75:3 76:9  
117:13  
**secured** 259:3  
**see** 8:18 14:5 15:1,8  
20:19 31:4,13 33:20  
34:18 35:15,19 55:16  
55:19 59:22 60:3,9,11  
73:14 75:8 76:18 81:9  
103:4 106:21 107:20  
114:8 116:2 121:19  
121:22 136:4 138:14  
150:6 155:9 156:11  
157:3,10 161:7  
163:21 164:10 165:15  
181:9,13 191:18  
206:1 207:7 212:4  
219:14 222:10 230:6  
239:8 240:21 244:15  
250:10 259:12 263:18  
273:6 277:11,12  
282:7 289:13 290:18  
294:17 299:4 313:3  
317:8 338:11,11  
340:9  
**seeing** 122:2,20 257:18  
262:15  
**seeks** 34:11  
**seen** 27:18 91:20 123:8  
144:1,4,10,14,19  
145:4 179:2 202:14  
204:20 209:12 212:11  
212:13 215:17 217:11  
219:10 234:15 237:4  
256:16 267:14,16

268:22  
**sees** 249:4  
**self** 236:4  
**self-serving** 249:12  
**send** 13:2 49:22 50:9  
52:18 53:1,7,8 60:11  
61:21 63:14,15 66:21  
76:1 81:14,18 119:4,7  
119:11,12,15 140:22  
330:14  
**sending** 11:9,12 53:3  
110:10,19  
**sends** 49:22 50:2  
110:14 119:3  
**sense** 80:15 129:8  
339:20  
**sent** 10:17,20 11:5 36:4  
36:8,10,11 48:9 49:7  
49:10 51:13 52:17  
53:12 57:10,22 58:6,8  
60:1,16 61:19 69:15  
71:14,17 72:19 74:2  
76:5 81:17,21 91:15  
92:4 93:3 103:14  
108:11 109:6 122:19  
124:17 199:8 253:18  
256:5 306:17  
**sentence** 10:19 55:20  
55:21 56:1 76:14  
86:22 168:21 237:15  
238:8,10 250:14  
290:17  
**sentences** 84:22  
**separate** 149:21 277:18  
**separated** 262:9  
**sequence** 174:5,20  
**series** 17:19 217:5  
245:21 249:1 251:1  
317:2  
**serve** 297:4  
**served** 30:7,11,18  
32:10 311:10  
**services** 241:15  
**serving** 146:10  
**session** 132:1 141:9,10  
141:12 299:19  
**set** 53:9 63:8,10,21  
100:17 101:6,14  
113:10 115:10  
**setting** 6:13  
**Settling** 2:7 4:14 91:3  
**seven** 7:8  
**Seventy-seven** 9:3 10:1  
**Seventy-six** 9:21  
**SG** 35:19  
**shake-up** 96:6

**Shaw** 2:10  
**she'll** 347:3  
**sheet** 115:12 224:12,14  
291:11  
**sheets** 220:11 306:16  
309:9 336:4  
**Sheppard** 122:6  
**shifting** 276:20  
**shop** 338:20  
**short** 8:16 17:14 51:21  
52:5 129:21 228:4  
270:16 296:21  
**show** 104:10 107:8  
111:20 158:10 183:1  
207:8 209:9 211:7,14  
211:15 212:2,2,6,8  
221:14 224:14 267:4  
272:12 274:12 290:6  
293:9  
**showed** 277:15  
**showing** 77:4 110:13  
228:10 266:13 272:11  
**shown** 248:16 249:3  
**shows** 13:4 110:10,10  
162:3 181:16 274:19  
**shred** 146:17  
**side** 299:19  
**sides** 185:5  
**sidetrack** 231:13  
**sign** 18:12 24:5 54:12  
93:16 94:7 126:20  
299:19 339:2  
**signals** 140:22  
**signatory** 56:8  
**signature** 23:22 45:10  
125:21 127:16 254:13  
259:12  
**signed** 37:2,4 93:11  
94:1 105:18 106:8,15  
126:17 127:2 299:15  
305:1 319:7,16  
**signees** 147:5  
**significance** 153:14  
157:16  
**significant** 222:9  
**signing** 23:15 24:11  
**Silberberg** 2:20  
**silly** 42:2  
**similar** 263:8 280:13  
309:8  
**similarly** 116:10  
**simple** 138:8  
**simply** 80:20 112:17  
151:19 170:1 226:2  
248:6 255:1 273:15  
284:9

- Simultaneous** 128:2  
140:7 186:20 201:10  
231:15 277:6
- single** 86:15 127:11  
226:3,4,4 233:11  
240:19 296:1 317:10  
332:3
- Singsation** 196:4  
221:13,13,17 222:2
- sister** 118:12
- site** 203:13 205:6
- sitting** 261:18 315:16  
326:5
- situation** 12:15 17:21  
17:22 65:3 70:17  
101:17 107:6 185:16  
188:16
- situations** 152:13
- six** 162:21 250:6
- Six-zero-two** 103:2
- Sixteen** 160:15 162:13
- sized** 8:13
- skewed** 87:13
- Ski** 219:17 220:1
- slog** 194:17
- small** 189:16
- smoke** 140:22
- Snowboard** 220:1
- Snowboarding** 219:18
- Snyder** 212:9
- Societies** 296:14
- Society** 156:16 157:11  
168:9
- software** 288:19
- solely** 175:12
- solicited** 71:17
- somebody** 59:5 182:15
- someplace** 59:1
- somewhat** 76:22  
131:17 289:18 301:1
- soon** 102:14 275:12
- sophisticated** 333:19
- sorry** 16:22 23:14 24:21  
29:2,9 34:20 35:5  
37:17 39:2,3,8 45:11  
45:12 48:5 55:2,11  
56:2 60:6,7 64:10  
69:9,11 70:21 74:6  
78:1,6 93:21 102:22  
105:10 116:9 118:17  
122:4 123:19 129:13  
134:21 140:17 175:2  
175:5 176:1,13  
183:10 188:1 198:13  
202:1 203:6 219:19  
220:17 225:8 228:3
- 248:10 260:10,17,20  
264:18 266:18,19  
275:3,4 276:16  
278:14 282:8 289:19  
293:13 297:6,21  
299:14 307:2 309:20  
317:22 319:19,21  
329:12 333:3 341:11  
342:1
- sort** 12:18 13:19 14:1  
14:19 15:9 22:8 65:15  
212:8 290:9 306:11  
328:11
- sound** 109:2 326:3
- sounds** 177:22 229:4
- sour** 84:16,18
- source** 331:13
- sources** 332:12
- Spain** 159:6 162:2  
266:2,4
- Spanish** 150:15 258:19  
266:21 296:21
- Spanish-language**  
265:22 266:2
- speak** 30:3 257:21  
286:21 308:5
- speaking** 128:2 140:7  
186:20 199:9 201:10  
231:15 253:17 277:6
- speaks** 56:19 89:6,15  
90:2
- specific** 11:14 64:16,17  
65:2,3 115:3 126:16  
134:10 221:11 239:5  
253:8 281:12
- specifically** 124:21  
171:16 184:11 190:10  
212:22 234:12 243:8  
244:13 255:16 306:2  
321:2,3
- specifics** 88:18 226:10
- specified** 234:5,12
- speculate** 140:6
- speculation** 29:18  
30:10 66:5 182:15
- split** 266:6
- spoke** 48:1 178:11  
179:6
- spoken** 62:4 82:3 178:3  
345:6
- sponsoring** 141:19,20  
141:20
- spot-on** 328:19
- spread** 270:16
- spreadsheet** 11:5 12:3  
12:17 58:8,12 133:7
- 133:13 135:14,16,20  
138:8 140:2,11 152:7  
154:1,16 156:9 161:4  
164:19,20 166:13  
184:5,20 188:11,18  
188:18 189:6 190:9  
193:21,22 196:3  
203:1,7 207:7,11  
209:17 212:1 221:20  
222:7,11,14 223:3,12  
223:13 224:1 225:20  
226:9,10,13,17 227:2  
229:11 234:15 245:12  
246:19 247:1 248:12  
252:12 268:13,14  
269:16 271:12 272:7  
277:10 280:8,14,15  
280:22 281:5,11,13  
282:22 285:10 287:12  
287:19 288:6,7,9,18  
289:1 290:3 291:16  
292:4 293:4,9,22  
297:14 298:10 303:7  
303:8,16,18 311:21  
322:6,21 324:7 325:3  
325:6 336:21 337:6  
342:21 343:1,3
- spreadsheets** 52:9  
226:11,14,16 274:3  
280:20 281:3
- spring** 333:3
- squander** 132:4 142:4
- St** 158:9
- stack** 312:9 314:5
- stacks** 314:8
- staff** 158:16
- stamp** 125:21 127:16  
305:10
- stand** 5:12 10:11 31:11  
128:19 326:5,14  
327:2
- standpoint** 197:4
- stands** 111:15 156:16  
286:21
- Star** 245:18
- start** 5:4 116:4 128:5  
141:13 257:17 278:17
- started** 5:14 14:13,22  
19:9 61:8 71:2 88:21  
231:22 255:8 341:16
- starting** 14:1 15:19  
333:3 346:3
- starts** 82:7 157:1  
290:17
- State** 15:7
- stated** 11:2 20:2 22:19
- 50:6 59:20 85:19  
341:5
- statement** 37:13 75:19  
80:16 83:4,13 86:7,13  
94:19 104:11 170:4  
184:18 185:7,9,20  
189:11 192:11 247:6  
247:8 249:12 271:5  
285:11,12,15,19  
286:2 289:12 292:22
- statements** 84:21 111:5  
200:5 250:1
- states** 15:8 204:18  
205:11 263:12 265:21  
266:8
- stating** 84:7 85:6
- statements** 45:5
- status** 6:14,15 72:3  
108:17 140:21 299:4  
300:6 303:20 344:13
- stay** 45:15
- Staying** 146:2
- STERNBERG** 2:13
- Steven** 4:2 240:8
- Stewart** 3:20 215:6,8,10  
215:11,12 216:1
- stick** 131:20
- sticker** 43:13
- stickers** 43:5
- stipulate** 30:18 41:7  
130:3 238:2
- stipulated** 32:10 155:19  
235:15 237:20
- stipulation** 41:14,22  
46:9
- stone** 113:10
- stop** 114:3 189:5 347:2
- stopped** 308:19 338:16
- stops** 163:3
- story** 15:14
- straightforwardly**  
113:1
- street** 2:11,14,21  
142:19
- Streisand** 202:8
- stricken** 185:12 198:11  
238:3,12 289:8 290:7
- Strickler** 1:21 8:7,9 9:3  
9:9,12,16 43:2 93:8  
93:13,16,21 94:5,9,12  
139:14,17 140:5,10  
140:17 192:22 193:5  
193:12 194:7 224:6  
224:16,20 225:7,10  
225:14,18 228:19  
229:14,17 230:3,19

231:8 248:19 270:15 271:6,18 273:5 275:2 275:5,13,20 276:19 282:3,10 292:11,14 292:18 304:8 311:2 311:18 312:20 313:9 315:6,9,15 322:11 325:2,5 334:2,7,18 335:1,5,9,19 336:16 337:9 338:8 339:8,15 340:19 341:11 342:2 343:22 344:2 <b>strike</b> 58:15 109:20,21 118:21 148:16 192:20 235:12 242:11 250:8 250:13 258:7 301:6 <b>stuck</b> 306:17 <b>studios</b> 217:17 <b>stuff</b> 58:12 78:6 220:10 <b>sub-agent</b> 268:20 <b>sub-exhibits</b> 55:6 <b>subject</b> 75:6 112:7 146:2 255:10 <b>subjective</b> 77:18 84:9 85:5 86:2 <b>submission</b> 285:18 <b>submit</b> 185:1 186:1 254:5 <b>submitted</b> 152:14 158:13,14 179:11 192:10 <b>Subsequent</b> 236:3 <b>subset</b> 139:6 <b>Subsidy</b> 2:2 4:1 239:3 <b>substantiate</b> 89:2,12 294:11 <b>substantiation</b> 133:2 <b>substitute</b> 248:5 <b>successor</b> 111:7 116:19 117:4 328:14 <b>sudden</b> 102:1 323:12 <b>Sue</b> 37:2 <b>sufficiency</b> 110:22 <b>sufficient</b> 38:15 130:11 142:1 230:10 274:22 315:11 <b>suggest</b> 272:10 <b>suggestion</b> 179:9 <b>suggests</b> 65:7 <b>Suite</b> 2:15 <b>summaries</b> 73:3 230:12 247:22 <b>summarized</b> 224:2,7 <b>summarizing</b> 230:21 <b>summary</b> 223:4 228:20 229:2,5 230:8,9,12	247:18,19 248:3,7,7 250:16 271:22 272:20 273:7,10,21 274:3 275:16,16 276:11 277:19 <b>summation</b> 222:18 <b>summer</b> 96:10 <b>supplied</b> 342:22 <b>support</b> 111:11 185:22 186:2 249:18 336:5 338:22 <b>supported</b> 309:9 324:22 325:1 <b>supports</b> 249:17 <b>suppose</b> 225:22 253:9 339:10 <b>supposed</b> 214:1 275:15 293:18 294:1 <b>sure</b> 21:12 24:6 27:14 32:5 38:21 39:13 50:16 52:15 59:12 63:7 78:16 82:2,5,6 92:21 95:21 97:20 112:21 115:19 116:6 118:7 130:9 131:14 131:15 136:16 253:7 255:7 278:18 280:2 282:4 288:20 289:14 305:17 <b>surgeries</b> 16:12 <b>surprise</b> 182:9,14 <b>surprised</b> 182:10,16 186:19 <b>suspect</b> 314:6 <b>suspenders</b> 57:3 <b>sustained</b> 16:3 29:20 30:5 38:3 56:20 57:6 64:5 68:3 71:6 89:8 89:17 90:4 96:20 99:19 101:11 174:9 182:19 187:13,18 196:15 244:7 <b>SUZANNE</b> 1:20 <b>swear</b> 254:16 316:5,8 <b>sworn</b> 10:10 143:4 <b>syndicated</b> 221:14 <b>Syndication</b> 4:2 171:10 171:12 219:1 <b>Syndications</b> 233:17 234:19 235:19 236:22 237:1 239:4  <b>T</b> <b>tab</b> 55:7,13 73:12 76:8 165:20,21 <b>TABLE</b> 3:1	<b>tabs</b> 226:5 <b>tabulate</b> 337:5 <b>tainted</b> 87:1 <b>take</b> 5:11 6:7,19 9:17 27:8 54:18 78:15 99:20 102:19 106:10 106:20 107:16 117:12 117:22 118:1,4 122:11 132:15 145:13 151:6,10 152:1 154:6 160:9 167:6,12 170:21 172:19 180:12 194:22 201:16 204:5 206:10 208:17 210:8 214:19 216:12 218:12 219:19 232:4 238:17 239:22 242:8 251:2 251:15 258:4 259:5 260:3 262:2,2 264:18 269:8 317:7,10 332:19 342:3 <b>taken</b> 51:17 140:1,3 156:8 269:15 275:11 323:10 <b>takes</b> 52:4 53:18 124:20 <b>talk</b> 87:3,4 230:4 279:3 280:6 309:18 <b>talked</b> 56:12 79:8 80:11 <b>talking</b> 25:2 32:6 35:3 58:11 97:20 179:3,5 189:7 214:7 225:15 229:5 255:16,22 265:10 277:19 282:4 282:15 286:20 294:16 299:6 302:8,9 307:3 330:20 332:7,10 334:16 341:16 347:2 <b>tech-savvy</b> 12:9 <b>Telefe</b> 268:8 <b>telephone</b> 22:7 69:17 <b>telephonic</b> 6:15 <b>Televisa</b> 4:4 259:2,10 263:14,20 264:2,3,5 264:11,14 <b>television</b> 76:6 181:3,5 181:11 185:18 207:8 209:8 211:14,15 220:12 268:8 <b>Televison</b> 182:11 <b>tell</b> 13:2,20 28:3 29:22 34:10 74:1 84:14,17 95:21 96:3,7 115:2,3 115:8 129:11 130:12 132:17 152:2 158:19 160:10 170:22 172:20 178:16 199:11 201:13	204:6 238:21 249:7 260:4 275:18 319:9 346:17 <b>telling</b> 80:21 333:16 <b>tells</b> 14:4 38:7 <b>templates</b> 71:13 <b>ten</b> 49:6 343:7,13 <b>term</b> 100:7,17 101:6,14 106:3,4 113:17 124:22 <b>termi</b> 263:15 <b>terminate</b> 36:22 38:8,19 <b>terminated</b> 65:20 92:11 92:15 101:22 102:11 102:14 109:22 113:19 260:16 261:13 <b>terminates</b> 37:19 <b>terminating</b> 38:10 92:9 113:15 <b>termination</b> 23:2 28:19 28:21 29:12 38:2 40:13 67:4 74:1 91:15 91:18,21,22 92:4,13 93:2,4 94:15 102:12 113:2,8,13,15 114:15 114:18 120:15 122:18 124:20 262:5,11 263:16 264:7 <b>terminations</b> 125:7 <b>terms</b> 113:16 114:9 156:5 205:9 <b>territories</b> 153:13 266:3 <b>territory</b> 159:6 <b>testified</b> 10:12 11:4 17:20 68:7 80:19 91:4 96:11 106:15 143:5 164:4 183:1 191:17 209:9 225:12 270:19 274:6 277:1,9 279:12 296:17 302:15 313:19 318:4 329:22 330:6 <b>testify</b> 134:7 172:4 223:6 248:1,6 250:2 345:11 <b>testifying</b> 193:2,21 222:17 224:9 226:21 248:8 249:21 326:7 <b>testimonial</b> 232:11 <b>testimony</b> 21:7,12 57:1 57:2 61:12,19 62:9 63:14 68:13 71:12 90:5 99:20 110:5,20 134:12 139:19 183:6 185:8 189:13 191:9 191:12 222:6 223:14 224:4 230:9,21 233:3
--	---	---	--

237:18 239:2 247:18	52:14 58:6,19 65:15	320:19 321:3 323:4,5	308:8 313:4,8 342:15
271:9,12 272:22	85:12 104:2 114:7	323:7,9,17 326:18	<b>times</b> 8:14 12:21 13:13
273:7,13 275:15	115:3,9 138:5 147:8	330:1 337:10 340:14	26:1 53:22 178:5
286:19,20 288:1,15	164:18 185:15 192:13	341:15 342:17 343:20	<b>tit-for-tat</b> 276:20
290:22 291:4 292:6,7	230:22 288:22 301:9	344:11 346:7	<b>title</b> 135:11 154:20
293:15 294:3 306:2	307:16,17 330:16	<b>thinks</b> 38:14 62:22	155:7 156:20 183:3
307:21 308:2 310:6	343:18 345:11,21	<b>third</b> 76:10 83:22	183:15 185:9,11
311:8 312:19 313:17	<b>things</b> 6:4 12:5 13:4	210:20 211:6 233:19	191:10 193:16 202:6
314:1,3,20 320:19	15:5 16:8,9 20:14	259:13	204:12,14 209:7
323:16 324:20 325:12	37:19 45:4 49:20 51:1	<b>third-party</b> 306:14	211:13 215:5 236:8
325:14,16 326:10,13	53:18 64:21 109:5	307:9,18 308:13,14	269:10 284:19 286:1
326:17,18 343:6	110:5 115:4 131:15	308:19 311:9 312:3	319:21,21
<b>text</b> 36:18 49:21 50:1	192:20 325:5 328:10	328:5	<b>titled</b> 48:13
75:3	335:10 339:10 344:12	<b>thought</b> 5:13 32:16	<b>titles</b> 13:6 71:18,19
<b>thank</b> 6:6 7:4 10:6	<b>think</b> 16:16 20:2,9 21:7	50:13 84:20 95:15,16	152:16 185:10 186:13
17:11 18:22 19:3,15	23:16 27:15 33:11	134:2 151:4 169:22	192:5,10 215:7
25:20 30:19 33:2 34:1	38:9,15,18 39:4 46:6	191:5 289:19 293:17	244:16 257:11 280:17
37:16 40:11 41:10	48:2 53:21 54:4,11	312:22	281:18 282:6,7
45:7,13 74:14 78:19	57:1 62:17 63:8 66:3	<b>thousands</b> 189:17	285:16 286:1,16
79:5 81:1 82:16 90:12	66:5 68:12,13,16,19	331:19,19	291:17 292:5,15,16
90:19 94:12 119:18	73:9 77:16 80:22 86:1	<b>thread</b> 186:16	311:5 318:6,7,13,14
121:1,4 122:8 123:18	86:3 87:17 94:3,20	<b>three</b> 5:16 7:8 61:21	318:18 319:11 325:1
124:16 125:9 127:5	98:2,2,4 99:15,16	63:16 69:17 86:19	325:14 329:13
129:5 130:14 132:11	101:10 109:3 111:4	100:10 168:20 172:10	<b>today</b> 6:16,19 48:2 57:2
134:16,20 140:19	111:15 112:20 117:22	208:7 214:5 240:16	57:2 95:14 96:17
141:2 143:8 152:1,21	118:18 119:22 120:17	244:10 250:4,7,10	129:22 142:13,14
162:18 167:10,12	125:3 128:11 131:4,7	252:22 277:14 278:4	267:16 270:19 271:9
170:20 172:18 174:9	132:2 134:1,7,8,12	290:15 299:3 300:5	296:18 324:4 345:7
174:11 176:7 180:5	138:11,15 139:1,2	<b>thrown</b> 59:15	<b>Toei</b> 205:11
194:21 201:15 206:4	140:1,2,8,15 141:22	<b>Thursday</b> 255:19	<b>told</b> 13:16 15:15 16:7
206:9,20 207:22	142:8,9 150:1 151:8	<b>tied</b> 135:18	21:10 80:21 84:20
208:16 210:7 211:11	157:1 159:19 161:15	<b>ties</b> 288:7 293:4	130:1,8,9 250:20
213:18 216:11 218:11	163:19 164:4 169:13	<b>Timberwolf</b> 158:7,11	264:13 312:17
221:2 227:15 228:1,6	170:2 175:6 176:5	<b>time</b> 11:6,10,13 14:7	<b>Tom</b> 212:9 232:11,19
228:14,19 231:18	177:1 179:8 180:2,22	15:2,3 21:13,21 22:9	<b>tomorrow</b> 129:12 130:9
232:3 238:16 239:21	181:1,2 182:4 185:14	49:3,13 51:20,22 52:1	130:13 132:4 142:14
242:7 251:14 256:14	189:16 191:10 196:5	52:4,6 53:19 62:14,15	142:16 255:19 345:21
258:6 260:1 265:2,9	199:2 201:9,14	73:12,22 77:12 84:14	346:6 347:4,5
270:8,9 279:8,22	202:19 203:18 210:15	84:18 85:4 92:15	<b>Tony</b> 206:12
282:10 292:3,18	212:12 217:17 219:20	96:10 97:7,17,19,20	<b>top</b> 28:7 81:9 202:17
295:15,21 299:21	222:8,16,19 223:9	99:5,10 102:14 104:1	209:15 238:12 254:12
301:20 302:13 315:21	224:18 226:14 228:17	104:14 108:2 116:2	269:3 298:7
316:7 326:20,21	230:3 233:13,18	120:11 123:7 124:13	<b>topic</b> 6:12 276:9
327:18,19 337:10	235:4,21 236:18	129:9 130:2,11,17	<b>topics</b> 167:22
344:19 347:6,7,8	237:17,20 240:14	131:2,17 132:5	<b>tore</b> 331:18
<b>Thanks</b> 284:17	244:14 246:6 247:7	140:20 141:8 142:2,4	<b>total</b> 7:8,10,10,12
<b>their's</b> 254:22	248:13,15,19 249:20	159:10 174:13 176:3	256:20
<b>then-Director</b> 330:11	254:15 255:20 257:1	177:9 178:3,14	<b>totally</b> 142:18
<b>Theoretically</b> 227:17	265:10,22 269:3	179:21 183:2,4,16,16	<b>toto</b> 170:4
<b>thereof</b> 222:18	272:13 274:21,22	186:9,10 191:11	<b>touchy</b> 84:19
<b>thereon</b> 271:5	275:10 276:19 277:11	192:9 229:9 233:7	<b>Tour</b> 220:2
<b>thereto</b> 120:1 252:16	278:2,13,14,15 289:4	234:6 235:21 236:20	<b>town</b> 345:12
<b>therewith</b> 236:1	289:22 291:13 294:12	246:13 258:6,8	<b>track</b> 96:1
<b>they'd</b> 241:14 329:20	296:22 302:17,18	260:15 261:11,12	<b>trading</b> 157:12
<b>thing</b> 13:19 14:2,19	303:16 309:12,22	262:8 263:1 264:18	<b>trained</b> 86:16
15:9 22:8 27:13 29:4	314:3 318:17 319:1,2	272:16 275:7 303:15	<b>transcript</b> 313:16

323:20 327:12  
**transcripts** 275:6,7  
**Transworld** 243:9  
 244:17 245:14  
**travel** 345:5,13  
**Travis** 34:18,22 35:4,6  
**treat** 59:17  
**trial** 84:6 85:8,16,17  
 88:19  
**Tribute** 202:7  
**tried** 14:21 322:7  
**trouble** 23:9  
**true** 22:22 44:1 46:21  
 75:15,19 76:4 120:1  
 254:17 310:4  
**trusted** 17:16  
**truth** 80:16 95:21 96:7  
 115:2  
**truthful** 72:12,14,20  
 76:20 77:17,18,19  
 79:9 104:10  
**truthfulness** 83:1,5  
**try** 5:19 17:13 20:15  
 23:14 52:5 60:8 63:6  
 91:13 101:3 131:19  
 142:12 186:2 191:21  
 316:8 336:17  
**trying** 12:2 14:15,22  
 38:13,20 52:2,21 53:4  
 53:4 64:22 93:22  
 105:10 166:2 185:22  
 202:16 205:21 255:18  
 262:14 272:12 301:11  
 325:8,10 333:13  
 338:22 339:6 340:3  
**Tuesday** 270:21  
**turn** 26:13 103:6 144:21  
 160:5 298:15 314:15  
 314:16  
**turned** 307:19 312:13  
 314:12 323:22 330:7  
 330:8,10,12  
**TV** 4:5 162:3 259:1  
 260:8 263:14,21  
 264:2,3,5,11  
**twain** 343:2  
**twentieth** 344:5  
**two** 7:9 8:7 33:4,5,9,10  
 37:18 42:21 61:21  
 63:15 69:17 70:8  
 86:19 129:20 130:4,5  
 130:20 132:1 141:10  
 150:2 152:2 157:2,22  
 175:10 210:20 211:5  
 220:13 232:18 248:22  
 250:22 252:20 255:8

259:1 260:10 261:13  
 262:22 284:2 288:8  
 290:15 292:10 297:13  
 306:4 309:7 312:7  
 328:2 335:9 344:12  
**two-day** 7:10,12  
**two-way** 62:4  
**tying** 148:13  
**type** 189:16 254:22  
 305:4 310:13,21  
 331:4  
**typed** 255:1  
**types** 71:13 281:12

## U

**U.S.** 108:18 202:5  
 205:12,22 220:1  
 258:11  
**uh-hum** 13:10 18:20  
 35:17 43:18 66:19  
 69:19 71:15  
**Uhh** 155:11  
**ultimately** 180:1 184:9  
 233:3 235:1 272:13  
**unbelievable** 15:14  
**unclear** 95:1 253:4  
**undated** 253:6  
**underlie** 325:12  
**underlies** 325:13  
**underlying** 133:4,4  
 139:12 140:4 144:9  
 145:5,7,8 152:11,12  
 152:14 154:4 157:21  
 190:10 230:13,15  
 276:21 301:5 336:18  
 336:22  
**underscored** 237:21  
**understand** 25:11,12  
 34:11 38:10 52:21  
 54:8 61:12,18 67:16  
 69:10 83:10 88:21  
 94:1 118:3 139:19  
 142:20 182:22 201:16  
 201:18 250:9 276:8  
 276:17 277:20 279:3  
 284:17 324:9 326:8  
 329:7 334:3,19 337:9  
 337:10  
**understanding** 34:14  
 38:5 63:13 98:8  
 136:14 137:13 153:18  
 178:1 197:13,19  
 211:12 221:4 222:12  
 277:9 281:17 290:1  
 293:20,22 296:8  
**understands** 274:7

**understood** 6:2 33:8  
 128:14 131:14 146:5  
 164:18 285:6,6  
 303:14  
**unfortunately** 42:4  
 68:20 163:11  
**unhelpfully** 317:11  
**unique** 17:22 138:10,21  
 139:3 152:8  
**unit** 306:19  
**United** 204:18 205:11  
 263:12 265:21 266:7  
**Universal** 184:14 268:7  
**universe** 7:14  
**unnecessary** 201:14  
**Unsolved** 217:5  
**untimeliness** 146:12  
**unusual** 70:4 109:6  
**unusually** 131:18  
**update** 84:16 108:17  
 109:19  
**updated** 66:15,16  
**updates** 72:3 73:1  
**upset** 236:14  
**use** 81:12 125:22  
 138:15 142:2 288:15  
 325:18 332:3  
**useable** 324:6  
**usual** 131:7  
**usually** 145:21  
**utilized** 15:5

## V

**vague** 94:21  
**valid** 92:13 223:10  
 318:12  
**validated** 99:1  
**validity** 37:10  
**Valle** 3:15 171:6,8,15  
**Valle's** 171:22  
**valor** 346:14  
**value** 251:10,10 337:12  
**variety** 20:14 153:7  
 212:3 217:15  
**various** 4:12 15:8 26:3  
 159:7 188:9 265:19  
 305:4 317:4 322:3  
**vein** 273:6  
**vendor** 306:15,20  
 307:10,18 308:14,14  
 308:19 311:9,10  
 312:3 328:5  
**Venevision** 268:7  
**venture** 259:9 260:7  
 265:12  
**veracity** 22:13 118:20

**Vernon** 3:3 4:12,17 5:9  
 5:11 10:8,15 19:22  
 31:14 32:9 34:7 41:4  
 43:13,16 44:20 45:9  
 45:15 48:1 54:18  
 55:15 57:2,8 62:22  
 70:10,13 71:5,8 79:7  
 81:9 83:22 90:13 91:1  
 93:9 95:10 100:15  
 105:6 108:8 112:20  
 118:10,19 125:11  
 128:18 173:6  
**Vernon's** 110:19  
**version** 213:21 214:3,4  
 280:16 293:14 313:18  
**versus** 53:2,7 56:15  
 288:18  
**Vice** 319:16  
**VICTORIA** 2:10  
**Video** 268:6,7  
**view** 54:8 177:2  
**vis-a-vis** 136:2,10,12  
 139:8 145:17 146:11  
 182:5  
**Vision** 219:1  
**visit** 259:3  
**Visual** 156:16 157:11  
 168:9  
**voice** 23:13 253:20  
**voir** 3:5 81:4,7 196:19  
 196:22 255:20 316:13  
**Volume** 1:13 6:5 8:5  
**volumes** 8:10  
**voluminous** 188:20  
 192:4 223:2,3,4  
 225:19 228:21 247:19  
 247:22 248:2  
**volunteer** 18:11

## W

**wading** 333:10  
**wait** 6:21 130:12 299:16  
 302:11  
**walk** 12:22  
**walking** 333:1  
**Walter** 103:5  
**want** 27:12 34:16 41:15  
 42:15 46:10 49:21  
 59:14 63:6 74:9 78:8  
 80:20 100:22 111:11  
 112:13 113:20 126:5  
 145:2,9 163:20  
 182:20 210:14 227:21  
 247:9 264:21 273:11  
 277:10 278:4 282:3  
 288:22 289:14 305:3

317:9 318:14 326:22 334:2,19 338:1 <b>wanted</b> 6:13 16:20 19:7 27:14 164:17 262:1 270:13,14 271:4 280:6 287:16 313:3,6 336:16 344:13 345:10 <b>wants</b> 274:19 276:21 <b>warm</b> 220:11 <b>warranties</b> 212:21 <b>Wars</b> 3:19,20 209:9 210:18,19 <b>Washington</b> 1:2,17 2:11,15,22 74:19 <b>wasn't</b> 27:1 32:14 53:9 59:2,10 221:8,10 225:15 231:2 246:21 246:22 279:15 311:13 <b>water</b> 342:11,12 <b>Watercourse</b> 3:22 232:10,14,20 233:6 233:10 236:4 <b>way</b> 6:4 7:14 8:19 13:1 33:12 46:11 62:22 63:9 85:15 151:3 157:1,19 163:6 169:15 191:20 223:13 230:13 231:21 284:3 306:11 322:14 333:10 337:2 338:22 339:6,9 340:7 342:11,12 <b>ways</b> 261:19 262:9 284:3 299:3 <b>we'll</b> 13:6 41:7 132:5 141:1 142:9 158:13 279:3,4,4 294:9 346:2 <b>we're</b> 27:4,15 95:13 113:15 115:14 140:20 142:12 146:3 149:19 155:11 175:3 179:15 179:15 185:13 186:3 189:13 194:16 208:6 212:12 214:7 215:8 215:22 226:13 227:19 230:3 255:16,18,22 262:2 264:18 276:9 277:19 282:4 295:5 345:18 <b>we've</b> 58:20 99:7 149:9 162:6 181:6 189:6 191:22 195:15 221:3 242:22 256:15,20 267:15 270:17 271:11 278:14 280:7 313:18 314:14 <b>website</b> 36:11 209:6	<b>websites</b> 15:7 <b>Wednesday</b> 1:14 129:17 <b>week</b> 150:1 166:3 270:21 <b>weigh</b> 251:9 274:20 <b>weight</b> 169:14 170:1 249:13 251:6 253:9 278:3 <b>weighty</b> 305:21 <b>Welk</b> 171:9,12 <b>well-articulated</b> 274:2 <b>well-maintained</b> 322:13 <b>went</b> 14:20 59:1,5 69:16 70:20 78:20,21 79:20 80:1 82:5,6 112:3 118:22 138:13 141:4 161:15 163:2 170:1 265:5 266:9,10,11 267:22 312:12 322:3 332:15 336:2,14 341:6 347:10 <b>weren't</b> 52:12 88:20 186:7 337:20 <b>Westside</b> 217:16 <b>whatsoever</b> 21:4 28:7 33:15 62:20 110:12 <b>whisper</b> 326:12 <b>WHITNEY</b> 2:20 <b>Whitt</b> 307:10 312:3,4,12 318:5 320:8,11 321:3 321:4,6 323:3,16,21 328:5 329:7 330:7 331:9 335:14 336:4,8 337:16 338:6,19,20 338:20 <b>Whitt's</b> 307:14 314:11 321:9,13 323:18 328:20 330:18 332:9 332:12 334:8,13 335:19 338:9,13,16 339:4 343:17 <b>Willie</b> 195:11,14 197:8 197:12,21 198:3,17 <b>willing</b> 179:7 <b>willingly</b> 168:16 <b>Wilson</b> 195:11,14 196:8 196:8 197:9,12,15,21 198:4,17 <b>window</b> 51:22 52:5 <b>Winford</b> 8:17 9:21 <b>Winthrop</b> 2:10 <b>wish</b> 296:20 313:16 <b>withdraw</b> 231:17 <b>withdrawn</b> 83:15 179:18 198:10 207:21	<b>witness</b> 10:11 15:18 16:2 17:13 18:20 24:21 25:17,19 27:6 27:11 28:18 30:13 31:11 32:5 33:14 35:7 43:14 45:3 62:18 63:10 67:14 68:17 69:11 74:14 80:18,19 82:13,20 84:12 87:11 88:15 93:12,15,18 94:3,8,11 98:6 100:2 112:9 113:9 114:5,20 115:2,18 116:1 125:13,16,19 126:1,8 126:12,15,18,20 127:3,6 128:16,22 129:1 139:22 140:8 140:13 141:19,20,21 143:3 149:2,6 151:18 154:12 160:15 165:2 167:2,20 171:5 173:2 176:9 177:10 180:17 183:22 193:2,20 194:2,6,11 195:7 198:12 199:1 201:22 204:11 206:18 208:22 210:14 213:11 214:6 214:10 215:3 216:17 218:18 222:21 223:5 223:16 224:10,18 225:1,13,21 226:16 227:12 229:4,16 230:21 237:18 248:1 265:14 267:7 277:1 280:4,9 292:13,15 305:17 315:15 320:10 320:15,17 326:4,6,13 333:14 334:6,11,22 341:22 342:21 344:17 <b>witness's</b> 343:5 <b>WITNESSE</b> 3:2 <b>witnessed</b> 298:14 <b>witnesses</b> 129:7,16,20 130:5,7,12 132:3 141:16 233:1 248:6,7 276:11 346:5 <b>wondering</b> 129:9 345:17 <b>Woodlief</b> 8:18 9:5,15 10:1 <b>word</b> 9:17 188:5 253:11 254:12 288:15 290:4 332:4 <b>worded</b> 262:7 264:15 <b>words</b> 114:14 190:21 328:17	<b>work</b> 12:3 13:18 20:18 49:14 202:13 217:2 341:9,10 <b>workbook</b> 191:17 192:17 193:1 <b>working</b> 12:19 263:2 <b>works</b> 195:9,11 <b>World</b> 319:16 <b>Worldwide</b> 2:2 4:1 35:19 150:6,6 166:15 173:5,8,11 174:18 205:4 211:18,19,21 212:18,20 239:3 <b>worldwidesg@aol.com</b> 81:11 <b>worried</b> 273:19 <b>worth</b> 57:5 218:20 <b>wouldn't</b> 51:9 64:4 65:17 76:1 102:12 113:19 254:20 298:10 331:14 <b>write</b> 60:9 103:12 <b>writing</b> 36:20 44:8 <b>writings</b> 228:22 <b>written</b> 82:12 97:1,7,9 97:16 98:7 99:5 184:17 185:6,8,19 189:10 191:9 192:11 247:5,7 285:10,11,14 285:19 286:2 287:22 290:22 292:6,21 343:5 <b>wrong</b> 193:8 251:4 274:13 327:11 <b>wrote</b> 105:21 <b>WSG</b> 4:4,5 259:10 260:8
			<hr/> <b>X</b> <hr/> <b>XYZ</b> 283:10,10,11,12,14 283:16,16,18,20,21 <hr/> <b>Y</b> <hr/> <b>yeah</b> 134:1 165:13 167:3 182:21 225:21 228:8 314:10 339:21 342:2 <b>year</b> 23:17 25:1,7 37:8 39:8,16 40:9 41:8 44:3 49:5 74:6 75:14 92:16 98:16,16,16,16 100:8 106:12 109:18 109:19,19 110:1,1,1 113:18,20 114:14,17 114:22 115:1 126:21 135:22 139:11 151:7

152:9 155:2,3,8 157:2	1:00 140:21	162 3:16	2004 317:8,14
157:5 161:5 163:1	1:15 141:4	167 3:15	2004-09 1:7 3:12
181:19 182:2,2,3,3	10 1:14 3:3 92:5 128:4	16th 37:3	2004-2009 1:6
184:11 188:15 190:11	10:30 78:21 346:18	17 3:16 167:2,5 172:20	2005 20:22 319:10
196:6 215:15,21	10:48 78:22	172:22 175:8,10,17	2006 25:3 262:16
224:3 235:22 236:17	100 20:5 115:14 189:11	176:2,2	263:16
237:7 257:6 258:4	100-percent 77:1	170 3:15	2007 23:16 24:11 25:1,2
262:22 295:7,9	101 1:17	171 3:15	25:2,3,7 262:17
318:14 319:20 320:1	105 4:17	172 3:15,16	263:16 298:22 300:4
332:1,14,15	10786 2:5	17th 174:12	301:16,22 317:8
years 34:8 37:8 39:6	109 74:10	18 3:17 180:13,15	2008 25:16 298:22
40:5 49:2 56:9 64:20	10th 121:18 123:4	187:15,18,21 188:3	301:21 302:1
70:8 77:6,6,6,6 92:5	11 151:11,13 165:5,20	194:14,15,20	2009 61:10 184:15
95:17,18 100:10,17	346:17	180 3:17	298:22 302:1 317:15
101:6,14,18,21,22	11:27 112:3	1818 2:21	201 3:18
102:5 107:7 119:21	11:30 112:4	19,527 152:10	2010 233:14 307:19
133:3 136:13,17,19	112 134:19	19/84 3:4	311:9
139:13 141:9 145:12	113 3:12 10:16 19:7,13	194 3:17	2011 61:7,8
145:16,20 146:10	19:17	195 3:17	2012-6 1:5
148:7 149:14,18	118 3:3	1997 87:14	2012-7 1:10
150:7,9 161:21	12 3:14 132:17 134:21	1998 181:7 233:13	2013 4:10,11 37:8 39:6
173:21 179:15 181:22	135:3 140:15,18	1999 61:10 107:11	39:7,8,12,14,15 40:4
181:22 184:8,9	143:10 145:11 149:12	234:13 236:2 237:3	40:9 41:8 43:22 44:3
190:18 195:16 207:5	280:13,15 281:17	239:10 323:15,20	44:11 46:20 79:16
207:14 217:6,10	282:5,7,19 284:11	1999-2009 1:10,11	92:16 93:14,17,19
221:14,17 234:8,19	12:00 6:20	1st 35:14 37:21 39:11	94:2,9 103:16 105:21
237:5 243:1 252:5	12:02 141:4		106:2,12 107:13,18
262:8 283:3 284:2,9	12:30 6:15,16,21,22	2	107:21 120:3,10
284:15,16 294:14,15	121 3:13	2 3:12 8:8 14:17 31:2	124:3,8 126:14
295:5 318:18,20	122 5:15	55:18,21,22 74:22	174:12
319:9 330:18 332:1	1233 2:14	2:31 227:16	2014 1:14 28:22 29:12
332:16	124 3:13	20 3:12,17 195:1,5	35:14 39:11,18,18
yes-or-no 54:12	126 3:13 121:8,10,11,14	196:17 200:15,19	40:1 41:8 44:3 55:15
yesterday 7:6 10:15	123:2,20 124:1	200 3:17 115:14,15	74:7 81:14,15 93:17
20:2 48:2 49:18 50:6	127 3:4 121:6 271:1	125:3	94:2,7 106:16,18
51:3 71:12 131:19	12th 103:16	2000 14:12 98:21	121:18 123:4 124:3,8
205:3 209:9	13 3:14 74:18 154:7,10	108:19 173:17,21	184:21 190:8 227:13
York 122:6	155:15,21 156:2	175:12 184:12 196:6	246:12 247:5,6 253:7
	246:12 247:5	215:16,22 226:5	342:14
Z	132 3:6	232:21 234:20 236:10	202 2:12,16,22
Z 3:18 204:12,17 205:1	135 3:14	319:20 320:1	204 3:18,18
205:12	14 3:15 93:19 94:4	2000-2003 80:10 150:12	206 3:18,19
Z's 204:14	167:13,18 168:18	177:3	208 3:19
Zealand 153:9,14	170:19	2001 37:3 184:13	209 3:19
	15 3:15 78:17 132:1,4	207:14 226:6 305:2	20th 2:14 37:4
0	141:11 170:22 171:3	317:6	21 3:18 201:17,20
00 295:17	172:6,13,17 239:10	2002 37:4 184:14	203:12,16,22 204:4
0003 73:22 74:22	247:6 265:2 323:15	207:14 226:6 305:2	210 3:19,20
03 295:17	154 3:14	317:6	213 2:6 3:20
	156 3:14	2002/2003 261:20	214 3:20
1	16 3:16 47:10 140:16	2003 66:10 98:21	216 3:20,21
1 20:9 31:1 35:10,13	141:9 160:10,13	108:19 173:17,22	218 3:21,21
132:16	161:18 162:8,16,19	175:12 232:21 233:14	22 3:18 7:11 204:6,9
1,000 291:9 331:5	163:2,3 165:5,21	234:20 236:10	205:19 206:5,8
1,500 138:12,21 157:9	166:21	20036 2:15,22	220 3:21
1,872 257:6,7	160 3:16	20037-1122 2:11	23 3:19 106:20 107:19

206:11,16 208:2,11  
208:15  
2300 2:11  
238 3:22  
239 4:2  
23rd 81:14,15  
24 3:19 208:18,20  
209:22 210:3,6 211:6  
242 4:2  
25 3:20 210:9,12,15  
211:8 213:3,6,10  
214:3,8,9,10 221:14  
251 4:3  
253 3:7  
256 4:3  
259 4:4  
25th 28:22 29:12  
26 3:20 55:7,13 214:8  
214:20 215:1 216:3,6  
216:10  
261 4:5  
27 3:21 73:12 76:9  
213:22 214:1,9  
216:13,15 218:3,6,10  
28 3:21 218:13,16  
220:15,18,22 231:20  
232:1  
280 3:7 4:7  
29 3:22 232:5,8 237:11  
237:14 238:7,15  
  
3  
3 1:13 8:5  
3:02 265:5  
3:22 265:6  
30 4:1 55:15 154:18  
161:5 184:21 227:13  
238:18 239:12,16,20  
246:20 286:10 287:7  
297:16  
307 4:9 26:14 29:2  
30:21 32:7,14 33:1  
34:3 94:14  
308 54:19 55:8,13 73:7  
73:9  
30th 133:8 135:16  
190:7  
31 4:2 44:3 240:1  
241:21 242:2,6  
316 3:9  
31st 93:14,17  
32 4:3 242:9 244:5  
251:8,13  
326 3:9  
33 4:3 251:16 252:19  
256:1,9,13

333 228:11 289:10,11  
341:7  
337 319:4,5  
338 298:15,19 300:2  
310:4,9 312:21 313:3  
313:4,4  
339 319:12  
34 4:4,9 259:6,15,18,22  
260:18,22  
341 4:12 304:3,5,10,11  
305:14 306:3 311:20  
315:7,12 316:20  
344:14,14,20 345:1  
344 4:12  
35 4:5 7:6 260:4,11,14  
260:19 261:2,6,9  
351 163:3,8  
351.10(c)(3) 228:20  
355-7900 2:22  
356 4:10 42:14 43:1,2,3  
43:4,10,17 44:10,15  
44:17 45:15 93:10  
106:11,21 107:12  
126:7  
357 4:10 42:14 43:1,4,4  
43:10 46:15 47:13,16  
47:19 93:10 107:17  
126:7  
358 4:11 78:12 79:11  
80:5 83:17 84:1 90:6  
90:8 108:4,7 109:8  
110:10 112:6,11,12  
116:17  
36 4:6 269:9 279:11,13  
279:18,21  
360.3(c) 117:13  
37 117:12  
385 163:1,6 269:3  
303:11  
  
4  
4 6:5 8:5  
4:30 227:19  
4:40 347:11  
40 223:14,21  
408-7600 2:16  
43 4:10,10 7:9,11  
43,628 152:8  
44 4:10 248:17  
44,000 224:5 225:2  
281:7  
44.75 152:19  
47 4:10  
49 157:2,3,3,10  
  
5

50 225:3  
56 157:13  
58 7:12  
582 139:9 143:17 144:3  
144:16,17,19,19  
294:12

## 6

60 46:1  
600 139:2  
602 4:16 102:20 103:19  
104:16 105:4 121:2  
624-1996 2:6  
65 157:22  
650 139:2,3,7,9 143:14  
663-8000 2:12

## 7

7 166:13  
703 2:15  
71 157:15  
76 8:4,15  
761 257:7  
77 8:5,17  
78 4:11  
79 155:3 157:4

## 8

8 30:16  
80 60:15,17  
81 3:5  
83 4:11  
8th 2:21

## 9